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A Wake-Up Call for American Society or Have "The Chickens Just Come Home to Roost?": Essay Review of Charles Patrick Ewing's *When Children Kill: The Dynamics of Juvenile Homicide*

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A Wake-Up Call for American Society or Have "The Chickens Just Come Home to Roost?"—Essay Review of Charles Patrick Ewing's *When Children Kill: The Dynamics of Juvenile Homicide**

Ruth-Arlene W. Howe**

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* CHARLES PATRICK EWING, *WHEN CHILDREN KILL: THE DYNAMICS OF JUVENILE HOMICIDE* (Lexington Books 1990).

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Boy, 11, is held in Hyde Park slaying.

An 11-year-old boy fatally stabbed a 16-year-old with a steak knife yesterday outside a Hyde Park home, police said. Children in the quiet residential neighborhood said the stabbing resulted from an argument over music cassette tapes.

Dolly Smith, *Boston Globe*, July 30, 1991.

Teen: Beverly suspect plotted murder.

The ex-girlfriend of the Beverly teenager charged in the killing of a 14 year-old cheerleader said yesterday he outlined a plot eerily similar to the murder a year ago. Diane M. Wagner, 15 of Broughton Drive, Beverly, said Jamie P. Fuller, 16, detailed a plan to kill Amy Carnevale during a phone conversation last summer.

"He said, 'I've been thinking about some way to kill Amy.' "He wanted to take her on a long walk to the woods. He was going to give her flowers, and then he was going to kill her and then throw her into a pond," she told the Herald.

Gary Witherspoon, *Boston Herald*, August 30, 1991.

A Sunday Boston Globe Magazine Cover:

A stark, despondent photograph, in shades of gray, shows from the rear, a White attorney, walking down a corridor in a Westborough, Massachusetts juvenile lockup, with his right arm across the back of his 15-year-old Black client, and his right hand resting on his

client's right shoulder, in what appears to be quiet, supportive consultation. The youth is being held for the April 20, 1991 double shooting of two youths, aged 15 and 11. Across the bottom of the page, in bold white print, is the feature article title: "*When Children Kill: Crime, Punishment, and the Debate Over Juvenile Justice.*"

Eileen McNamara, *Boston Globe Magazine*, November 24, 1991.

I. INTRODUCTION

The above 1991 excerpts from Boston newspapers, available FBI arrest data,¹ and U.S. Census Bureau statistics² all sadly affirm the validity of Charles Patrick Ewing's closing predictions in *When Children Kill: The Dynamics of Juvenile Homicide*. Namely, "the rate of juvenile homicide is almost certain to continue growing over the next ten years . . . and the 1990s will probably witness the highest annual number of juvenile homicides in American history."³

Since 1984, the annual number of juvenile arrests for murder and non-negligent manslaughter has steadily increased.⁴ While 1,004 persons under the age of eighteen were arrested for homicide in 1984, 7.3 percent of the total 13,676 arrests that year; by 1990 the number of arrests of those below eighteen had more than doubled, rising to 2,555, 15.6 percent of all 1990 arrests for murder and non-negligent man-

1. See Fed. Bureau of Investigation, U.S. Dep't of Just., *Uniform Crime Reports for the United States* 184 (Table 33-Total Arrests, Distribution by Age 1990) (1991) [hereinafter *FBI Uniform Crime Reports (1990)*]; Fed. Bureau of Investigation, U.S. Dep't of Just., *Uniform Crime Reports for the United States* 182 (Table 33-Total Arrests, Distribution by Age 1989) (1990) [hereinafter *FBI Uniform Crime Reports (1989)*]; Fed. Bureau of Investigation, U.S. Dep't of Just., *Uniform Crime Reports for the United States* 178 (Table 33-Total Arrests, Distribution by Age 1988) (1989) [hereinafter *FBI Uniform Crime Reports (1988)*].

2. Bureau of the Census, U.S. Dep't of Commerce, Current Population Reports, Series P-25, No. 1057, *U.S. Population Estimates by Age, Sex, Race, and Hispanic Origin: 1989* 2 (Table A. Population by Age Group, Sex, Race and Hispanic Origin. July 1, 1980 to July 1, 1989 and text) (March 1990).

3. CHARLES PATRICK EWING, *WHEN CHILDREN KILL: THE DYNAMICS OF JUVENILE HOMICIDE* 135 (Lexington Books 1990) [hereinafter *WHEN CHILDREN KILL*].

4. *Id.* at 1 ("based upon calculations using data from *FBI Uniform Crime Reports 1979 through 1988*" *Id.* at 138 n.3).

slaughter.⁵ These figures become even more disturbing when other things are considered. During the 1980s there was "a steady, annual decrease in the number of juveniles in the United States."⁶ Yet, the 1990 figures for those under 18, when compared to 1988 (the final year reported upon by Ewing),⁷ show an alarming 45 percent increase, or 790 more homicides.⁸ Still more alarming, in terms of percentages, although the actual numbers remain few, is the 1990 increase, over 1988, in the under 15 age group. In 1990 there were 283 reported arrests of juveniles under the age of 15—a 41 percent increase over the 201 reported arrests in 1988.⁹

Building on earlier joint research¹⁰ on juvenile justice and juvenile homicide, done with sociologist Simon Singer and research assistant John Rowley, Ewing, a clinical and forensic psychologist, attorney and professor of law and clinical associate professor of psychology at the State University of New York at Buffalo, looks behind the headlines, in *When Children Kill*, to describe who these children are. Some kill parents, siblings or other family members; some kill during the course of committing other crimes, most often rape and robbery; some participate in gang killings; a very few are girls and children under 10 years of age; and then there are "the bizarre homicides, including 'thrill' killings, cult-related killings, and killings committed by disturbed juveniles."¹¹ A tightly written volume, *When Children Kill* is intended to be a useful resource for legal and mental health professionals who represent or work with violent juvenile offenders.

Part I of this Essay recounts, in some detail, Ewing's findings about juveniles who kill—the incidence and prevalence of juvenile homicide, the law's current response and his projections for the future. The book's strengths and weaknesses are discussed in part II. Because this book forced the reviewer to ponder the horrendous societal conse-

5. See *FBI Uniform Crime Reports (1990)*, *supra* note 1.

6. *WHEN CHILDREN KILL*, *supra* note 3, at 1 (citing U.S. Dep't of Commerce, Bureau of the Census, *Estimates of the Population of the United States by Age, Sex and Race: 1980-1986* (1987)).

7. See *id.* at 2 (Table 1-1: Murder and Non-Negligent Manslaughter Arrests by Age Group 1979-1988); and *FBI Uniform Crime Reports (1988)*, *supra* note 1.

8. See *FBI Uniform Crime Reports (1990)* and *FBI Uniform Crime Reports (1988)*, *supra* note 1.

9. See *supra* note 8.

10. See, e.g., John C. Rowley et al., *Juvenile Homicide: The Need for an Interdisciplinary Approach*, in 5 *BEHAVIORAL SCIENCES & THE LAW* 1 (1978).

11. *WHEN CHILDREN KILL*, *supra* note 3, at inside back flap of book jacket.

quences and costs, if this growing phenomenon of juvenile homicide is not accurately understood and comprehensively addressed as a serious public health¹² issue, an attempt is made in part III to delineate what the challenges are for society and the law—both the juvenile justice system and the criminal justice system. Finally, in part IV, an urgent prescriptive plea is made regarding how the phenomenon of juvenile homicide ought to be understood and addressed.

II. A TROUBLING PHENOMENON: DESCRIPTION OR EXPLANATION?

A. *Summary of Contents*

Just as this Essay began with headlines taken from local Boston newspapers, Ewing begins his examination of the growing incidence of juvenile homicide with terse, graphic summaries of twenty-three homicides, committed in fifteen states and reported by the news media, between January 1986 and January 1989.¹³ After these introductory vignettes, Ewing begins his work with two chapters: first a statistical description of the incidence and prevalence of juvenile homicide, pri-

12. See generally DEBORAH PROTHROW-STITH & MICHAEL WEISSMAN, DEADLY CONSEQUENCES: HOW VIOLENCE IS DESTROYING OUR TEENAGE POPULATION AND A PLAN TO BEGIN SOLVING THE PROBLEM (1991) [hereinafter DEADLY CONSEQUENCES]; *infra* part IIIA (for further discussion); see also C. Everett Koop, *Introduction*, in DEADLY CONSEQUENCES xvii, xviii ("that the discipline of public health possesses the solution to the mounting toll of violence in this country. The public health approach seeks to prevent tragedy; it seeks to identify and treat young males who are at risk for violence before their lives and the lives of those around them are ruined. The discipline of public health provides strategies to stop violence before it maims and kills.").

Public health can be defined in broad terms, even though its more specific focuses alter with time and place [T]he Milbank Memorial Fund for Higher Education for Public Health [defines] public health [as] encompass[ing] those activities that organized societal entities (both governmental and non-governmental) deliberately conduct to protect, promote, and restore the health and quality of life of the people on a broad community or population basis.

Gerry A. Solon, *Health Services: Public Health Programs*, in 2 ENCYCLOPEDIA OF SOCIAL WORK 611 (17th ed. 1977).

13. WHEN CHILDREN KILL, *supra* note 3, at xiii-xv. The reported homicides had occurred in Alabama, California, Colorado, Florida (2), Georgia (3), Indiana (2), Louisiana, Massachusetts (3), Missouri, New Jersey, New York (2), Oregon (2), Pennsylvania, South Carolina and Wisconsin.

marily drawn from analysis of U.S. Census Bureau population data and *FBI Uniform Crime Reports*; and a longer chapter 2, critically reviewing published research studies on juveniles who kill.

Ewing then devotes six chapters to discussion of specific types of juvenile homicides. Chapter 3's focus is "intra-familial homicides: juveniles who kill their parents and/or siblings."¹⁴ "[H]omicides committed by juveniles in the course of perpetrating other crimes, primarily theft crimes (such as robbery and burglary) and sex crimes (such as rape and sexual abuse)"¹⁵ are examined in chapter 4. In chapter 5, Ewing looks at "unusual, highly deviant or bizarre juvenile homicides, as well as those perpetrated by juveniles who appear to be psychotic or suffering from some other form of serious mental illness."¹⁶ Two shorter chapters follow: chapter 6 on gang killings, "one of the most visible and troubling forms of juvenile homicide in America: killings committed by groups or gangs of youths, acting together—killings that are almost always senseless and often related to drug trafficking;"¹⁷ and, chapter 7 reviewing "homicides committed by very young children, essentially those under the age of ten."¹⁸ In chapter 8 data is presented on "a minority group among juveniles who kill: girls" who "account for less than 10 percent of all homicides committed by American juveniles annually."¹⁹

Ewing concludes *When Children Kill* with two final chapters: a review of the law's response to juvenile homicide (Chapter 9) and a predictive look at the future of juvenile homicide between now and the year 2000 (Chapter 10). In these closing chapters, Ewing "examines the general legal structure for dealing with juveniles who kill," especially the state statutory provisions "that allow some juvenile killers to be tried as adults, sent to prison, and, in some cases, even executed."²⁰ To support his assertion that the annual incidence and rate of juvenile homicide in the United States of America will increase, he points to the confluence of five forces, currently operative in American society: "(1) increasingly serious substance abuse among juveniles and adults; (2) apparently rising rates of child maltreatment; (3) expanding access to

14. *Id.* at xv (pp. 31-47).

15. *Id.* (pp. 50-62).

16. *Id.* (pp. 63-80).

17. *Id.* (pp. 81-90).

18. *WHEN CHILDREN KILL*, *supra* note 3, at xv (pp. 91-100).

19. *Id.* at xvi (pp. 101-111).

20. *Id.*

guns . . . ; (4) the growing number of juveniles living in poverty; and (5) the anticipated resurgence in the juvenile population.”²¹

B. *Juveniles Who Kill: A Statistical Overview*

Salient facts about the incidence and prevalence of juvenile homicide that can be drawn from analyzing available FBI arrest records, U.S. Census Bureau data, and various writings of others²² are presented in chapter 1. First, the most striking aspect is age. Eighty-five percent or more of those juveniles who kill are fifteen, sixteen or seventeen; less than one percent arrested for murder or non-negligent manslaughter are under fifteen.²³ Ewing notes that “[a]s age levels rise, so do the annual number of arrests for murder and non-negligent manslaughter. Interestingly, other crimes committed by juveniles do not show nearly so clear a positive connection between incidence and age.”²⁴

Second, “[j]ust as younger juveniles rarely kill, girls of any age are extremely unlikely to commit homicide.”²⁵

Third, with respect to race, Ewing observes that:

Black youth are vastly overrepresented among those juveniles arrested for murder or non-negligent manslaughter. Only about one sixth of all Americans under the age of eighteen are Black, yet in recent years roughly half the juveniles arrested for these homicide crimes have been Black. Indeed, . . . in recent years, Black youth have constituted the majority of those arrested for murder and non-negligent manslaughter in the under-eighteen age bracket.²⁶

While recognizing the existence of racial discrimination in the criminal justice system, Ewing yet states, “there also seems to be no question that Black youths are disproportionately involved in the com-

21. *Id.* at 127.

22. Frequent references are made to Dewey G. Cornell, *Causes of Juvenile Homicide: A Review of the Literature*, in JUVENILE HOMICIDE 1-36 (Elissa P. Benedek & Dewey G. Cornell eds. 1989) [hereinafter JUVENILE HOMICIDE]; Rowley et al., *supra* note 10; Frank E. Zimring, *Youth Homicide in New York: A Preliminary Analysis*, in 13 J. OF LEGAL STUDIES 81 (1984).

23. WHEN CHILDREN KILL, *supra* note 3, at 3.

24. *Id.* (table 1-3—Murder and Non-Negligent Man-Slaughter Arrests of Juveniles By Age Group 1984-1988).

25. *Id.* at 4.

26. *Id.*

mission of criminal homicide. In short, Black youths are much more likely than White youths to kill."²⁷

Next, if the ethnicity of juvenile homicide arrestees is reviewed, it is striking that Hispanics constitute only about 8 percent of the population, but "Hispanic youths account for almost a quarter of all under-eighteen arrests for murder and non-negligent manslaughter."²⁸ Ewing comments:

Hispanics, like Blacks, are undoubtedly the victims of discrimination in the criminal justice system, and so these figures must also be interpreted with caution. Like Blacks, Hispanics are probably somewhat more likely than Whites to be arrested for homicide crimes they commit. Yet, even allowing for such discrimination, there can be little doubt that, like Black youngsters, Hispanic youths account for a disproportionate share of homicides committed by persons under the age of eighteen.²⁹

The fifth statistical category examined by Ewing was the relationship between perpetrator and victim. Contrary to what might be inferred from much of the research to date, "the fact is that only a rather small percentage of juvenile killers kill their parents or stepparents, and only a slightly larger percentage kill other family members."³⁰ The vast majority of juvenile killers kill either acquaintances or strangers. Ewing's analysis of available data³¹ "demonstrate two clear and statistically significant associations: (1) between victim-offender relationship and whether the homicide was incidental to a theft offense (such as larceny, burglary, or robbery) and (2) between victim-offender relationship and whether the homicide was committed individually or by a group."³²

Utilizing a series of four tables, Ewing shows that intrafamilial homicides almost never are incidental to a theft offense, but six percent of acquaintance homicides and fifty-eight percent of stranger homicides occur in the course of a theft offense.³³ The majority (fifty-three per-

27. *Id.*

28. WHEN CHILDREN KILL, *supra* note 3, at 6.

29. *Id.* This overrepresentation of Hispanic youth is particularly striking and far exceeds the roughly 16 percent of Hispanic adults arrested for murder or non-negligent manslaughter. *Id.*

30. *Id.* at 7.

31. See *supra* note 10.

32. WHEN CHILDREN KILL, *supra* note 3, at 7.

33. *Id.*

cent) of juvenile homicides involving acquaintance or stranger victims are perpetrated by multiple offenders acting in concert. In contrast, "when the victim was a family member, less than twenty percent of the homicides were committed by more than a single perpetrator."³⁴ Another interesting victim-offender association was that found between the gender of the killer and the relationship to the homicide victim. Girls almost always killed family members or acquaintances; boys more likely killed acquaintances or strangers. "[Y]ounger juveniles were somewhat more likely than older juveniles to have killed family members. Also Whites were somewhat more likely than non-Whites to have killed family members."³⁵

Ewing ends his statistical overview chapter with an analysis of the circumstances under which juvenile killings occur, namely (1) during the commission of other crimes, specifically robbery; (2) by groups as opposed to individuals acting alone; and (3) with utilization of weapons such as guns and knives. As previously noted, "a substantial percentage of nonfamilial juvenile homicides are committed incident to (i.e., in the course of accomplishing) some sort of theft crime."³⁶ As the age of the youngest perpetrator of a theft crime increases, so does the likelihood that a robbery victim could be killed. While "multiple-perpetrator juvenile homicides are rather rare when the homicide victim is related to the perpetrator," group killings "constitute a substantial portion (42.1 percent) of juvenile acquaintance homicides . . . and make up the majority (68.6 percent) of juvenile stranger homicides."³⁷ Younger perpetrators are more likely to act in concert with others.

Finally, consistent with national data on all arrests for murder and non-negligent manslaughter revealing a use of firearms in almost 60 percent of these killings, a majority, though a slightly lower percentage, of juvenile homicides also are perpetrated with firearms. "[N]ot surprisingly, gun use in juvenile homicides is lower in younger age groups and seems to increase steadily with increasing age."³⁸

34. *Id.* at 8.

35. *Id.*

36. *Id.* at 9.

37. WHEN CHILDREN KILL, *supra* note 3, at 10. Ewing asserts that review of arrest data from New York City for the years 1973-1980 [see Zimring, *supra* note 22] and for all of New York State for 1987 [see Office of Justice Systems Analysis, New York State Division of Criminal Justice Services, *New York State Homicide 1987* (1988)] reveal a close correlation between the age of an offender and whether a homicide is committed individually or by a group.

38. *Id.* at 11.

C. Review of the Research

1. General Assessment

In Ewing's opinion, the professional and scientific literature of children and adolescents who kill, beginning with two published studies³⁹ from the 1940s, is "surprisingly sparse—both in quantity and in quality. Most publications on the subject share a number of common but significant methodological shortcomings."⁴⁰

First, most of the literature deals with juveniles who kill family members, primarily parents, even though "juveniles who kill parents or other family members represent only a small proportion—less than 20 percent—of homicidal youth."⁴¹ Second, many study samples, with few exceptions, have been extremely small. "The bulk of empirical data on juvenile homicide comes from anecdotal case studies—reports on extremely small samples of homicidal youngsters: commonly fewer than ten, often under four, and sometimes just a single case."⁴² A third limitation is that frequently "subjects have been selected on the basis of their availability to the investigators," often psychologists and psychiatrists to whom the juveniles who killed within the family "were referred for psychological/psychiatric evaluation/treatment."⁴³ Ewing further decries other problems:

Moreover, for the most part, those few studies that did involve greater sample sizes and more sound sampling procedures have been plagued with methodological limitations, flaws that significantly limit any generalizations that might be drawn from their results. Virtually none of these studies have employed control or even comparison groups, and most researchers have relied upon their own, sometimes idiosyncratic, interests and theories in deciding what data to collect, how to collect it, and how to report it.⁴⁴

Nevertheless, Ewing concludes that while "it is difficult to draw relia-

39. See R. M. Patterson, *Psychiatric Study of Juveniles Involved in Homicide*, in 13 AM. J. ORTHOPSYCHIATRY 125 (1943); Thom, *Juvenile Delinquency and Criminal Homicide*, in 40 J. MAINE MED. ASS'N 176 (1949).

40. WHEN CHILDREN KILL, *supra* note 3, at 13.

41. *Id.* at 14.

42. *Id.*

43. *Id.*

44. *Id.*

ble generalizations from these studies[, s]till, some data, limited though they may be, are better than no data.”⁴⁵ Then, drawing from the reviewed literature, he proceeds in the rest of chapter 2 to describe salient characteristics of both youngsters who kill and their families, frequently noted prehomocidal behavior and adjustment problems, and the types of homicides committed.

2. Individual Characteristics of Juvenile Killers

In response to the questions: “Who are the juveniles who kill? Are they emotionally disturbed, mentally ill, mentally retarded, learning disabled, neurologically impaired, or simply ‘normal’ youngsters who commit extremely abnormal acts?”⁴⁶ Ewing draws these findings from the literature. First, most juvenile killers are not psychotic and do not suffer from major mental disorders. Most of those “studied by researchers to date have fallen into the diagnostic category of personality disorder, sometimes referred to as character disorder. Personality (or character) disorders are characterized by inflexible, maladaptive ‘patterns of perceiving, relating to, and thinking about the environment and oneself.’”⁴⁷

Though studies suggest that juveniles who kill may tend to be below normal in intellect, they generally are not mentally retarded. Some may even have IQs above 100.⁴⁸ What is striking is the strong evidence

45. WHEN CHILDREN KILL, *supra* note 3, at 14.

46. *Id.* at 15.

47. *Id.* at 16 (quoting American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (3d ed. rev. 1987); see also notes 28-41 and accompanying text.

48. *Id.* at 18 & nn. 46-49 (citing studies by Bender, *Children and Adolescents Who Have Killed*, in 16 AM. J. PSYCHIATRY 510 (1959); Patterson, *supra* note 39; King, *The Ego and the Integration of Violence in Homicidal Youth*, in 45 AM. J. ORTHOPSYCHIATRY 134 (1975); Brandstadter-Palmer, CHILDREN WHO KILL, paper presented at Annual Convention of the American Psychological Association (Toronto August 1984)). But see *id.* at nn. 42-43, 45 (citing studies suggesting “that juveniles who kill tend to be below normal in intellect, although generally not mentally retarded”); Hays et al., *Intellectual Characteristics of Juvenile Murders Versus Status Offenders*, in 43 PSYCHOLOGICAL REPORTS 80 (1978) (a sample of 35 juvenile killers had significantly lower IQs than a similar sample of 39 juvenile status offenders); Petti & Davidman, *Homicidal School-Age Children: Cognitive Style and Demographic Features*, in 12 CHILD PSYCHIATRY & HUMAN DEV. 82, 85 (1981); Solway et al., *Adolescent Murders: Literature Review and Preliminary Findings*, in VIOLENCE AND THE VIOLENT INDIVIDUAL 193 (J. Hays et al., eds. 1981); Lewis et al., *Neuropsychiatric Psychoeducational and Family Characteristics of 14 Juveniles Condemned to Death in*

of a correlation between cognitive and language deficits and juvenile homicide.⁴⁹ Early studies, by Patterson⁵⁰ and Bender,⁵¹ as well as later studies,⁵² in the 1970s and 1980s, all report that juvenile killers experienced major learning problems, had drastically stunted language skills, poor academic performance, or may have quit school. Ten of the fourteen juveniles on death row, in the 1988 study by Lewis et al., were found to have major learning problems; only three read at grade level; and three had never learned to read until incarcerated.⁵³

Among the general juvenile population, it is unclear whether mental retardation and learning difficulties are associated with or caused by neurological impairment. But, "it has long been acknowledged that juveniles who kill often do suffer from neurological defects. For example, three decades ago Bender reported that among fifteen juvenile killers tested, ten had abnormal electroencephalogram (EEG) tracings."⁵⁴ During the 1980s, Lewis and her colleagues found a similarly striking prevalence of neurological impairment in two studied groups of juvenile killers, one general in nature and the other all given death sentences.

Among the death row group . . . Lewis and her associates found that all fourteen of these subjects had histories and/or symptoms consistent with brain damage. In fact, eight had experienced head injuries 'severe enough to result in hospitalization and/or indentation of the cranium' and nine had 'serious' documented neurological abnormalities, including focal brain injury, abnormal head circumference, abnormal reflexes, seizure disorders, and abnormal EEG

the United States, in 145 AM. J. PSYCHIATRY 584, 587 (1988)).

49. Ewing states: "Many of the juvenile killers described in case studies were reported to have been experiencing significant academic problems at the time they killed, despite their generally average or better intellectual capacities." *Id.*; see, e.g., nn. 50-51 citing D.J. Scherl & J.E. Mack, *A Study of Adolescent Matricide*, in 5 J. AM. ACADEMY OF CHILD PSYCHIATRY 559 (1966); I.B. Sendi & P.G. Blomgren, *A Comparative Study of Predictive Criteria in the Predisposition of Homicidal Adolescents*, in 132 AM. J. PSYCHIATRY 423, 425 (1975); and J. Bernstein, *Premeditated Murder by an Eight-Year-Old Boy*, 22 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 47 (1978).

50. See *supra* note 39.

51. See *supra* note 48.

52. WHEN CHILDREN KILL, *supra* note 3, at 19 & nn. 55-57 (citing studies by Sendi & Blomgren, *supra* note 49 and by King and Brandstadter-Palmer, *supra* note 48).

53. *Id.* at 18-19.

54. *Id.* at 19.

findings.⁵⁶

Ewing stresses, however, that "whether or not a given juvenile killer suffers from neurological dysfunction may not be ascertainable from published clinical accounts of his or her case."⁵⁶

3. Family Characteristics

The families of juvenile killers are typically described as being broken, disturbed, neglectful and abusive. For nearly half a century, reported studies have shown that the percentage of juvenile killers who come from homes broken by parental separation, desertion and/or divorce is very high.⁵⁷

Ewing notes that probably the most consistent finding from the reviewed research is "that children and adolescents who kill, especially those who kill family members, have generally witnessed and/or been directly victimized by domestic violence."⁵⁸ Many juvenile killers have witnessed spousal abuse. The more common occurrence is personally being victimized by child abuse, mostly physical, but "several accounts also suggest that many juveniles who kill also have been abused sexually."⁵⁹

55. *Id.* at 19-20 (quoting from Lewis et al., *supra* note 48) (citations omitted).

56. *Id.* at 20.

57. *Id.* at 20-21 & nn. 71-79 (referring to Patterson's early 1942 study [see *supra* note 38] in which "five out of six juveniles [that] he studied came from broken homes marked by serious marital disturbances." *Id.* at 21; more than four decades later, "Brandstadter-Palmer [*supra* note 48] found that among the twelve juveniles murder defendants in her study, only one was living in an intact family." *Id.*; Lewis et al., [*supra* note 48] found that of the fourteen youth on death row studied, nine "had at least one parent who was an alcoholic, was mentally ill, and/or had been hospitalized for psychiatric treatment." *Id.*)

58. WHEN CHILDREN KILL, *supra* note 3, at 22.

59. *Id.* at 23 & nn. 98-100. Ewing notes:

For example, in the recent death row study by Lewis and associates [*supra* note 48], five of fourteen juveniles who killed had been previously sodomized by older family members. Earlier, Sendi and Blomgren [*supra* note 49] found that while four of ten adolescents killers had been "seduced" by a parent, none of the ten youngsters in a control group had experienced such abuse.

The findings of Corder and colleagues [Corder et al., *Adolescent Parricide: A Comparison with Other Adolescent Murder*, in 133 AM. J. PSYCHIATRY 957, 959 (1976)] suggest that sexual victimization by a parent may also be more likely found in cases where the child-victim has killed

4. Prehomicidal Behavior and Adjustment

While most juveniles who kill are neither psychotic nor suffer from any major mental disorder, the research data reviewed by Ewing did suggest that many, if not all, juvenile killers exhibit "some form of noticeably deviant behavior prior to committing homicide. The most common forms of such behavior . . . are antisocial conduct, substance abuse, truancy, running away from home, enuresis, and problems relating to peers."⁶⁰ Many studies found a prehomicidal history of antisocial behavior documented by prior records of arrests and criminal convictions. A few cited studies⁶¹ found no clear history of prior anti-social acts. Other researchers found major differences in the incidence of prior antisocial behavior depending upon the nature of the youthful homicide perpetrator or the relationship between the perpetrator and homicide victim. For example:

Zenoff and Zients divided their youthful homicidal subjects into three subtypes: sexual-identity conflict killers (relatively normal youngsters with sexual identity problems that seemed related to the homicide); nonempathic killers (essentially self-centered, impulsive youngsters with cognitive deficits, and innocent killers (juveniles who killed accidentally or in self-defense). Of the six juvenile killers in the sexual-identity conflict group, none had prior court records for violent offenses and only two had referrals for property offenses. Only one of the innocent killers had any history of assaultive behavior. But all seven youthful killers in the nonempathic group had histories of both assaultive behavior and numerous property offenses.⁶²

Corder and associates, who grouped their subjects according to victim-offender relationships, "found histories of aggressive behaviors in all ten juveniles who killed strangers, in six of ten who killed acquaint-

his/her parent.

Id.

60. *Id.* at 23-24.

61. *Id.* at 24-25 nn. 109-111 (citing studies by C.P. Malmquist, *Premonitory Signs of Homicidal Aggression in Juveniles*, in 128 AM. J. PSYCHIATRY 461, 462 (1971) and Patterson, *supra* note 39).

62. *Id.* at 25 (summarizing the findings of E.H. Zenoff & A.B. Zients, *Juvenile Murders: Should the Punishment Fit the Crime?*, in 2 INT'L J. L. & PSYCHIATRY 533 (1979)) (citations omitted).

ances or relatives, but in only three of ten who killed parents.”⁶³ Similarly, with respect to prior institutionalization for criminal acts, Corder et al. found that nine of the ten who killed strangers, five of the ten who killed acquaintances or relatives, but only one of the ten who killed parents had such a history.

Although general criminological research indicates “a significant if not causal relationship between substance abuse and criminal activity, especially violent crime,” Ewing’s research review found that “[s]urprisingly few studies of juvenile killers have examined this relationship.”⁶⁴ Cornell and associates recently “reported that thirty-eight of the seventy-two homicidal youth they studied had killed while intoxicated.”⁶⁵ Of this group, twenty-four were deemed regular or heavy alcoholic users, and twenty-nine regular or heavy drug users. “Similarly noteworthy data have also been reported by Brandstadter-Palmer, who recently found that two thirds of the dozen juvenile murder defendants in her sample had histories of substance abuse.”⁶⁶

Two other phenomena often appearing in the profiles of juvenile killers are truancy and running away from home. The frequent incidence of school and learning problems has been noted earlier in this essay. Ewing comments that “[n]ot surprisingly . . . running away from home has been reported almost exclusively as a behavior engaged in by juveniles who eventually killed one of their parents.”⁶⁷

Many clinicians and researchers have recognized an interesting correlation between juvenile homicide and “childhood enuresis.”⁶⁸ Ewing credits an early 1961 article by Michaels, entitled “Enuresis in Murderous Aggressive Children and Adolescents,” as having set the

63. WHEN CHILDREN KILL, *supra* note 3, at 25 (referring to Corder et al., *supra* note 59).

64. *Id.*

65. *Id.* at 26 (citing Dewey G. Cornell et al., *Characteristics of Adolescents Charged With Homicide: Review of 72 Cases*, in 5 BEHAVIORAL SCIENCES & L. 11 (1987) (a study of a comparatively large sample of youth referred for pretrial evaluation in the State of Michigan over a nine-year period, compared with a control group of 35 adolescents charged with nonviolent larceny offenses)).

66. *Id.* (citing Brandstadter-Palmer, *supra* note 48).

67. *Id.* & n. 126 (citing R.L. Sadoff, *Clinical Observation on Parricide*, in 45 PSYCHIATRY 65-69 (1971); Scherl & Mack, *supra* note 49; and E. Tanay, *Reactive Parricide*, in 21 J. FORENSIC SCIENCES 76-82 (1976)).

68. Childhood enuresis is “the repeated involuntary or intentional voiding of urine during the day or at night into bed or clothes, after an age at which continence is expected.” *Id.* (quoting American Psychiatric Ass’n, *supra* note 47).

stage for this interest.⁶⁹ Ewing notes that two other behaviors, fire setting and cruelty to animals, often appear conjointly with enuresis, in juveniles who kill; but the literature has not given them as much attention as enuresis.

Lastly, many juveniles who kill are considered to have had problems relating to their peers. Those "who commit parricide may be more likely than other juvenile killers to have demonstrated difficulties relating to their peers. Corder and his colleagues found an absence of peer relations among seven of ten juveniles who killed their parents, three who killed a relative or close acquaintance, and three who killed a stranger."⁷⁰

5. Types of Homicides

Ewing reports that researchers have categorized and compared juveniles who kill either on the basis of the type of homicide committed or "the following factors: victim-offender relationship; means of homicide; motivation for the killing; and the presence or absence of accomplices."⁷¹

As noted earlier, while the literature is heavily devoted to intrafamilial homicides, "most juvenile killers kill acquaintances or strangers, not members of their own families."⁷² Often studies or reports on juvenile killings are silent with respect to the means. When descriptions are given, "[m]ost of the killings . . . were perpetrated with guns, knives, or the killer's bare hands, although occasionally other objects have reportedly been used. Perhaps the most consistent and striking finding with regard to means of homicide is the extent to which juveniles who kill do so with guns."⁷³

Ewing concludes that "[m]any juvenile homicides appear motiveless In other cases, however, the juvenile killer's motive seemed

69. Ewing states: "'[P]ersistently enuretic' individuals, Michaels suggests, cannot hold their tensions, are impatient, and are impelled to act. They feel the urgency of the moment psychologically, as at an earlier date they could not hold their urine." WHEN CHILDREN KILL, *supra* note 3, at 26 (quoting J.J. Michaels, *Enuresis in Murderous Aggressive Children and Adolescents*, in 5 ARCHIVES GEN. PSYCHIATRY 94 (1961)).

70. *Id.* at 28 (citing Corder et al., *supra* note 59).

71. *Id.*

72. *Id.*

73. *Id.* at 29.

reasonably apparent, though not always understandable.”⁷⁴ Often a parricide seems to be “rooted in the juvenile’s desire for revenge against and/or escape from a parent who is (or at least is perceived by the youth to be) abusive.” Some parricides seem to be motivated also “by a desire to protect and/or please a parent.”⁷⁵ The studies do not indicate any similar clear motive for the killing of other family members. “Killings of acquaintances seem most commonly to be related to some immediate interpersonal conflict or to be incidental to the commission of other crimes, such as burglary or rape. Killings of strangers generally seem to occur in the course of committing other crimes, such as burglary, robbery, and rape, but often have no apparent motive.”⁷⁶

D. *The Law’s Response to Juvenile Homicide*

After presenting descriptive profiles for juvenile perpetrators of various types of homicidal acts, in chapter 9, Ewing provides his reader with an overview of the current options, mandated by the laws of different American jurisdictions, for dealing with juvenile killers.

1. Trial in Adult Criminal Court

Formerly, “it was legally presumed that all juveniles below a certain age (usually eighteen but sometimes sixteen) were not sufficiently sophisticated and mature to be held criminally responsible for their antisocial acts. Youth below this age were automatically treated as juveniles.”⁷⁷ Today, all American jurisdictions have laws, “variously known as transfer, waiver, or certification provisions, [whereby] older juveniles (generally those older than twelve) who commit the most serious personal crimes (e.g., homicide, rape, kidnapping, armed robbery, arson, sodomy, aggravated assault) may be prosecuted and, if convicted, punished as adult criminals.”⁷⁸ The minimum age at which a

74. WHEN CHILDREN KILL, *supra* note 3, at 29-30.

75. *Id.* at 30 & nn. 163-68 (citing studies by Patterson, *supra* note 39; J.W. Duncan & G.M. Duncan, *Murder in the Family: A Study of Some Homicidal Adolescents*, in 127 AM. J. PSYCHIATRY 74-78 (1971); Sadoff, *supra* note 67; Cornell et al., *supra* note 65, at 2-21; and Malmquist, *supra* note 61, at 464)).

76. *Id.* nn. 175-76 (referring to study by Rowley et al, *supra* note 10, at 3).

77. *Id.* at 117 & n.23 (citing Levine et al., *Juvenile and Family Mental Health Law in Sociohistorical Context*, in 10 INT’L J.L. & PSYCHIATRY 91 (1987)).

78. *Id.* at 114; *see, e.g.*, IND. CODE ANN § 31-6-2-3 (West 1991); MASS. ANN. LAWS ch. 119, § 1, 53 (Law. Co-op. 1991); 1991 La. Sess. Law Serv., Ch. C. Ann. art.

juvenile killer may be prosecuted as an adult varies greatly.⁷⁹ Generally, to be tried as an adult, "a juvenile must, in addition to meeting age and crime requirements, be found by the court not suitable for treatment as a juvenile."⁸⁰ Ewing explains that in most states judges are directed by statute to consider specific factors such as "(1) the danger or threat posed to the community by the juvenile; (2) the degree of sophistication and maturity exhibited by the juvenile; and (3) the likelihood that the juvenile can be rehabilitated through the services available to — and prior to expiration of the jurisdiction of — the juvenile court."⁸¹

Ewing aptly comments as follows:

Given the clear relationship between these factors and the juvenile's psychological makeup and functioning, it is not surprising that forensic mental health professionals (primarily psychologists and psychiatrists) have come to play a major role in helping courts to determine whether or not a given juvenile should be tried as a juvenile or as an adult. Juveniles charged with serious crimes and eligible for transfer, waiver, or certification are now routinely subjected to forensic mental health evaluations, and the courts routinely give great weight to these evaluations in determining

101, 116 (West); MO. REV. STAT. § 211.031.1 (1991); OKLA. STAT. tit. 10, § 1102 (1991).

79. WHEN CHILDREN KILL, *supra* note 3, at 114-15. Ewing lists fifteen states as setting no minimum age: Alaska, Arizona, Florida, Kentucky, Maine, Maryland, Nebraska, Nevada, New Hampshire, Oklahoma, Pennsylvania, South Carolina, Washington, West Virginia, and Wyoming. A juvenile as young as 10 years old may be prosecuted as an adult in three states: Indiana, South Dakota and Virginia. Three states have a minimum age of 13 years: Georgia, Illinois, and Mississippi. The minimum age is 14 in eleven states: Alabama, Colorado, Connecticut, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, and Utah. Ten other jurisdictions: Arkansas, District of Columbia, Idaho, Louisiana, Michigan, New Mexico, Ohio, Tennessee, Texas and Virginia, have a minimum age of 15 years; and in eight states: California, Delaware, Hawaii, Montana, North Dakota, Oregon, Rhode Island and Wisconsin a youth must be 16 years old. See also Richard J. Bonnie, *Juvenile Homicide: A Study in Legal Ambivalence*, in JUVENILE HOMICIDE 194 (Elissa P. Benedek & Dewey G. Cornell eds. 1989) (Table 3, presenting the minimum ages for exercise of criminal court jurisdiction in murder cases, adds New York to the group of eleven states listed by Ewing as having 14 as a minimum age; and in the footnote explains that in both New York and North Dakota, criminal court jurisdiction is mandatory at 14).

80. WHEN CHILDREN KILL, *supra* note 3, at 115. Compare VT. STAT. ANN. tit. 10, § 5502 (1990) with WYO. STAT. § 14-6-203 (1991).

81. WHEN CHILDREN KILL, *supra* note 3, at 116.

whether to try a youngster as a juvenile or as an adult.⁸²

In discussing these factors, Ewing identifies certain underlying assumptions and societal concerns. First, concern about the danger a juvenile may pose to society is "a reflection of incapacitation as a justification for criminal punishment. [This assumes] that juveniles who pose no danger or only minimal danger to society may safely be treated as juveniles, while those who are more dangerous require longer and more secure incarceration for the protection of the public."⁸³ Second, underlying "concern over maturity and sophistication is society's long-standing notion that adult penal sanctions should be reserved for those mature enough to be held fully responsible for their crimes."⁸⁴ As previously noted, youths, seventeen and younger, were not deemed criminally responsible. "Under modern waiver, transfer, or certification laws, the presumption remains but is rebuttable."⁸⁵ Third, Ewing asserts that two questions are critical in determining a given youth's amenability to treatment: "(1) Are the dispositions available to the juvenile court likely to rehabilitate the juvenile before that court's jurisdiction ends? (2) Are the services available to the juvenile in the criminal justice system appropriate to his/her needs?"⁸⁶

From his study of the research literature, Ewing concludes that certain factors are particularly predictive of adult prosecution of juveniles who kill, as illustrated by Eigen's study of 154 juveniles arrested for homicide in Philadelphia in one year.⁸⁷ Factors predictive of waiver for trial as an adult were: (1) a killing during the commission of a felony; (2) by one seventeen year old at a time; (3) acting as the principle assailant; and (4) having a prior criminal record.

2. Punishment of Juveniles Who Kill

The law's response to juvenile homicide is different depending on whether an alleged juvenile killer is tried in juvenile court as a juvenile

82. *Id.* (citations omitted).

83. *Id.*

84. *Id.* at 116-17.

85. *Id.* at 117.

86. WHEN CHILDREN KILL, *supra* note 3, at 117.

87. *Id.* at 117 n.28 (citing J. Eigen, *Punishing Youth Homicide Offenders in Philadelphia*, in 72 J. CRIM. L. & CRIMINOLOGY 1072 (1981) (51 percent of these youths were retained and tried in the juvenile court; 49 percent were waived for trial as adults)).

or in criminal court as an adult. If dealt with in the juvenile justice system, most state laws limit the duration of a sentence to the offender's minority or a relatively short period thereafter.⁸⁸ In contrast, a youth who is "tried and convicted of murder or manslaughter in adult court may be sentenced to prison, detention in a juvenile facility, or both."⁸⁹ In states imposing the death penalty for certain murders, juveniles, unless expressly exempted, upon conviction of murder or non-negligent manslaughter in adult court, are eligible for capital punishment.⁹⁰ Thus, as Ewing poignantly notes, "in some cases the transfer or waiver decision may mean the difference between life and death for a juvenile killer."⁹¹

3. Incarceration of Juveniles Who Kill

Ewing reports that "juveniles convicted of homicide crimes in adult court are treated much more harshly than those found guilty of such crimes in juvenile court."⁹² Eigen's study of 154 Philadelphia juveniles revealed sharp differences in outcomes. Ninety percent of those tried as adults were given prison sentences, while fewer than fifty percent of those tried in juvenile court were incarcerated. No youth tried in juvenile court was confined to a state institution beyond his or her twenty-first birthday. "In those cases tried in criminal court, however, all . . . convicted of felony-related murder and 84 percent of those convicted of murder not related to another felony were sentenced to terms of imprisonment ranging from one to two years to life in prison. One youth convicted in adult court was sentenced to die."⁹³

88. *Id.* at 121; *see, e.g.*, KY. REV. STAT. ANN. § 640.10 (Baldwin 1991) (considering the seriousness of the offense, whether the offense was against persons or property, with greater weight being given to offenses against persons; the maturity of the child as determined by the environment; the child's prior record; the best interest of the child and community; the prospects of adequate protection of the public; and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available to the juvenile justice system).

89. WHEN CHILDREN KILL, *supra* note 3, at 121; *see, e.g.*, MASS. ANN. LAWS ch. 119, § 58 (Law. Co-op. 1991) (providing for a probationary or commitment period for a child that shall not be for a period longer than until such child becomes eighteen or age nineteen in the case of a child whose case is disposed of after he has attained his eighteenth birthday).

90. WHEN CHILDREN KILL, *supra* note 3, at 121; *see also infra* part ID4.

91. *Id.*

92. *Id.*

93. *Id.*

4. Capital Punishment for Juveniles Who Kill

Ewing finishes his summary of the American legal system's response to juvenile homicide, with the sobering observation that "while rarely imposed, the death penalty remains a viable option for punishing juveniles who kill."⁹⁴ Very few nations in the world today execute persons for crimes committed while they were juveniles. Yet, three of the eight executions of juveniles, documented by Amnesty International as occurring since 1979, "took place in the United States. The remaining five occurred in Pakistan, Bangladesh, Rwanda, and Barbados."⁹⁵

Drawing from the review of state statutes in the 1989 Supreme Court opinion for two juvenile capital punishment cases decided together, *Stanford v. Kentucky* and *Wilkins v. Missouri*,⁹⁶ Ewing states that of the thirty-seven states permitting capital punishment, "twenty-two of these states (Alabama, Arizona, Arkansas, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, and Wyoming) allow the execution of juveniles convicted of murder committed before they were seventeen years old."⁹⁷ Three more states (Georgia, North Carolina, and

94. *Id.* at 126.

95. WHEN CHILDREN KILL, *supra* note 3, at 123. It is to be noted that, [m]ore than 90 juveniles have been sentenced to death in the USA since the death penalty was reinstated in the 1970's; all were aged between 15 and 17 at the time of the offense. Although many have had their sentences vacated on appeal, four were executed between 1985 and 1990 and 31 remained on death row as of 1 July 1991. Although they represent only a small proportion of the more than 2,400 prisoners under sentence of death in the USA, there are more juvenile offenders on death row in the USA than in any other country known to Amnesty International.

Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders*, Summary (AI Index: AMR 51/23/91) (issued 9 October 1991).

96. 109 S. Ct. 2969 (1989).

97. WHEN CHILDREN KILL, *supra* note 3, at 123 & n.57 (though not explicitly listed in Justice Scalia's opinion for the majority in *Stanford*, Ewing apparently compiles this list of states from those enumerated in footnote two and the accompanying text. 109 S. Ct. at 2975.). Conversely, Justice Brennan points out in his dissent:

The 15th State to have rejected capital punishment altogether is Vermont. Vermont repealed a statute that had allowed capital punishment for some murders. See Vt. Stat. Ann., Tit. 13, § 2303 (1974 and Supp. 1988). The State now provides for the death penalty only for kidnapping with intent to extort money. *Id.*, § 2403. Insofar as it permits a sentence of death, § 2403 was rendered unconstitutional by our decision in *Furman v. Georgia*, 408

Texas) allow execution of a juvenile who was seventeen years at the time the killing occurred.

During the 1980s, the United States Supreme Court heard several cases raising constitutional challenges to state death penalty laws as applied to juveniles. In 1982, in *Eddings v. Oklahoma*,⁹⁸ the Court vacated the death sentence of sixteen-year-old-runaway, Monty Lee Eddings, who had been abused by his father. While acknowledging that Monty's youth was a substantial factor, the sentencing judge "refused, as a matter of law, to consider Monty's disturbed family life and emotional problems as mitigating evidence."⁹⁹ The Court rejected Monty's claim of a violation of the Eighth Amendment's ban against cruel and unusual punishment and instead decided the case on the narrower grounds "that in a capital sentencing proceeding, sentencing authorities may not 'refuse to consider, as a matter of law, any relevant mitigating evidence.' Youth, the Court concluded, 'is itself a relevant mitigating factor of great weight.'"¹⁰⁰

Six years later, in *Thompson v. Oklahoma*,¹⁰¹ the Court was confronted with the question whether or not a person could be executed for a crime committed while under the age of sixteen. William Wayne Thompson's death sentence was vacated, but the Court "failed to resolve the controversy over the age at which capital punishment becomes a constitutionality valid penalty."¹⁰² Four justices held that execution of a person under the age of sixteen at the time of the offense was prohibited by the Eighth Amendment. A fifth justice, Justice O'Connor, concluding that there very likely was a national consensus forbidding such execution, nevertheless stated her unwillingness "to adopt this conclusion as a matter of constitutional law without better evidence than we now possess."¹⁰³ She provided the fifth concurring

U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), because Vermont's sentencing scheme does not guide jury discretion, see Vt. Stat. Ann., Tit. 13, §§ 7107-7017 (1974). Vermont's decision not to amend its only law allowing the death penalty in light of *Furman* and its progeny, in combination with its repeal of its statute permitting capital punishment for murder leads to the conclusion that the State rejects capital punishment.

109 S. Ct. at 2983 n.1 (Brennan, J., dissenting).

98. 455 U.S. 105 (1982).

99. WHEN CHILDREN KILL, *supra* note 3, at 123.

100. *Id.* at 124 (quoting Justice Powell in *Eddings*, 455 U.S. at 877).

101. 108 S. Ct. 2687 (1988).

102. WHEN CHILDREN KILL, *supra* note 3, at 124.

103. *Id.* (quoting Justice O'Connor concurring in the judgment in *Thompson*,

vote, but on the narrower ground "that those 'below the age of 16 at the time of their offense may not be executed under the authority of a capital punishment statute [such as the Oklahoma law under which Thompson was sentenced] that specified no minimum age at which the commission of a capital crime can lead to the offender's execution.'" ¹⁰⁴

One year later in 1989, the Court again was confronted with the question of at what age is capital punishment a constitutionally valid penalty. In the jointly decided cases, *Stanford v. Kentucky* and *Wilkins v. Missouri*,¹⁰⁵ the Court upheld death sentences imposed upon Kevin Stanford (seventeen years and four months at the time he and an accomplice, during a robbery, raped and sodomized a female gas station attendant whom later he shot in the head) and Heath Wilkins (sixteen years and six months old, when robbing a convenience store with an accomplice, repeatedly stabbed the store clerk). "Justice Scalia, joined by four other justices, concluded that there is no national consensus against executing sixteen- and seventeen-year olds convicted of murder" ¹⁰⁶ This time, only Justice Brennan, in dissent, referred to "psychological and psychiatric data indicating that juveniles lack the judgment and moral maturity necessary to hold them fully responsible for their crimes."¹⁰⁷ Thus, Ewing asserts "that there is no constitutional bar to imposing the death penalty upon juveniles who were at least sixteen years old at the time of their capital crimes."¹⁰⁸

E. *The Future of Juvenile Homicide*

In chapter 10, Ewing concludes his book with a brief discussion of the "forces currently operating in American society" that lead him to forecast "that the number and rate of juvenile homicide will continue to increase and may reach record proportions by the turn of the

108 S. Ct. at 2706).

104. *Id.*

105. 109 S. Ct. 2969 (1989).

106. WHEN CHILDREN KILL, *supra* note 3, at 125.

107. *Id.* at 125-26 (citing *Stanford*, 109 S. Ct. at 2988-92 (1989) (Brennan, J., dissenting)).

108. *Id.* at 126. Thus, while *Eddings* requires that, whatever the age of the juvenile, all mitigating evidence including the offender's youth must be considered by the sentencing authority, judge or jury; under *Thompson*, a youth may be given the death sentence so long as the statutory provisions under which the youth is sentenced explicitly set a minimum age for capital sentencing. *Id.*

century."¹⁰⁹

1. Substance Abuse

Ewing claims that substance abuse affects juvenile homicides in three ways: "(1) most directly by altering the psychological functioning of juveniles in ways which make them more likely to kill; (2) less directly by creating an environment in which some juveniles have economic incentives to kill; and (3) indirectly, by contributing to the likelihood of child maltreatment."¹¹⁰

Although Ewing found "no definitive data regarding how many juvenile homicides are committed by youths under the influence of drugs,"¹¹¹ he mentions disturbing statistics about New York City:

In 1988, the overall estimated number of drug abusers under seventeen in New York City alone reached an all-time high of 140,000. As juvenile drug abuse was reaching record highs, so too was juvenile homicide. In 1988, the number of murders in New York City reached an all-time annual high of 1,896, and the number of murders committed by juveniles went from twenty-four in 1987 to fifty-seven in 1988, a 138 percent increase in a single year.¹¹²

Secondly, Ewing notes that some juvenile homicides may result from the behavioral changes, lowered inhibitions or impaired judgment flowing from drug use and abuse. Other killings occur "not because the perpetrators are necessarily under the influence of drugs when they kill, but rather because these homicides [are] committed as part of the juvenile perpetrators' efforts to make or protect drug profits."¹¹³ Ewing predicts that juvenile killings will increase "[a]s drug trafficking increases and/or becomes more competitive."¹¹⁴

Lastly, Ewing states that the serious growing problem of parental

109. *Id.* at 127.

110. *Id.* at 128.

111. *WHEN CHILDREN KILL*, *supra* note 3, at 128.

112. *Id.* (citations omitted).

113. *Id.* at 129.

114. *Id.*; see also Bureau of the Census, U.S. Dep't of Commerce, *STATISTICAL ABSTRACT OF THE UNITED STATES*: 1991 184 (111th ed.); No. 309, Drug Arrest Rates for Drug Abuse Violations, 1980 to 1989, and by Sex and Region, 1989; No. 310 Drug Removals, Laboratory Seizures, and Persons Indicated, by DEA: 1984 to 1989 (1991) (indicating a marked increase in seizures and arrests for 1984-1989).

drug abuse “has had and will continue to have an indirect and long-term but significant impact upon the incidence of juvenile homicide by contributing to the incidence of child abuse and neglect.”¹¹⁵ The number of child abuse and neglect cases involving parents who are drug abusers and/or addicts is growing rapidly.

2. Child Maltreatment

Ewing asserts that “[t]he correlation between child abuse and juvenile homicide, though not well researched, makes sense intuitively [Thus,] increases in the incidence and/or severity of child abuse are likely to be followed by corresponding increases in the number and rate of juvenile homicides.”¹¹⁶ To substantiate the contention that “the United States is experiencing an ‘epidemic’ of child abuse” which “will undoubtedly affect the incidence of juvenile homicide for some time to come,” Ewing refers to “testimony given before the United States Senate Judiciary Committee in May of 1989 indicat[ing] that there was a 64-percent increase in the number of confirmed child abuse cases in the United States between 1980 and 1986.”¹¹⁷

3. Guns

“Most homicides, including those perpetrated by juveniles, involve the use of firearms.”¹¹⁸ From Ewing’s discussion of various juvenile killings—shooting a parent, sibling or playmate with a parent’s handgun, using a handgun during a robbery to kill the victim, or firing a semiautomatic assault rifle out of a car window in a drive-by gang related killing of a rival, one thing stands out. All these perpetrators had ready access to guns. Hard data on gun ownership in the United States may not readily be available. Yet, “several points seem beyond dispute: millions of guns ranging from small handguns to semiautomatic assault rifles are owned by Americans; and many of these weapons are either

115. *WHEN CHILDREN KILL*, *supra* note 3, at 129.

116. *Id.* at 130.

117. *Id.* at 130-31; *see also* Bureau of the Census, U.S. Dep’t of Commerce, *STATISTICAL ABSTRACT OF THE UNITED STATES*: 1991 182 (111th ed.); No. 305. Reported Child Neglect and Abuse Cases, by division: 1980 to 1987; No. 306. Child Maltreatment Cases Reported—Summary: 1976 to 1986 (1991) (indicating a increase from 785,100 cases in 1980 to 2,025,200 in 1987).

118. *WHEN CHILDREN KILL*, *supra* note 3, at 132.

in the hands of or readily available to juveniles"¹¹⁹ Some large urban school districts have installed metal detectors in an effort to keep guns out of their schools. Three states, Florida, Connecticut and Virginia, reacting to a 1989 "rash of accidental shootings of children by other children . . ." have enacted legislation "making it a crime to leave loaded guns where they are accessible to children."¹²⁰ Ewing notes "[e]ven the National Rifle Association (NRA), which vehemently opposes virtually any legal controls on gun ownership, has acknowledged the growing problem of juveniles' access to guns."¹²¹

Ewing is not hopeful that any of these efforts will make any immediate difference. Rather, he maintains that "juvenile access to guns will likely continue to grow, and thus continue to contribute to the growing problem of juvenile homicide."¹²²

4. Poverty

First, Ewing states that "[t]he link between poverty and crime in American society, including violent crime, is complex and not entirely understood, but almost universally recognized."¹²³ In Table 10-2 he provides figures for the years 1978 through 1987, showing a steady rise in the percentage of youths under the age of 18 in families below the "official" poverty level.¹²⁴ Acknowledging a lack of hard data about the percentage of juvenile homicides committed by economically impoverished youths, Ewing nevertheless asserts the following:

Youngsters living in poverty are more likely to become involved in juvenile gangs, more likely to commit economically motivated crimes such as robbery, and more likely to be exposed to the temptations of involvement in the drug trade flourishing in their com-

119. *Id.*

120. *Id.* at 133.

121. *Id.* Ewing notes, "[r]ecently, the NRA began producing and distributing a children's coloring book. The booklet, *My Gun Safety Book*, is designed for children from kindergarten through first grade and tells them that if they find a gun, they should leave it alone, leave the area, and tell an adult." *Id.*

122. *Id.*

123. WHEN CHILDREN KILL, *supra* note 3, at 133.

124. The "official" poverty threshold rises each year by the same percentage as the annual average Consumer Price Index. See Bureau of the Census, U.S. Dep't of Commerce, POVERTY IN THE UNITED STATES: 1990-1995 Current Population Reports, Consumer Income, Series P-60, No. 175, (Table A-2, Poverty Thresholds in 1990, by Size of Family and Number of Related Children Under 18 Years) (1991).

munities. Thus, with increased poverty is likely to come increases in the number and rates of these kinds of juvenile homicides.¹²⁵

5. Resurgence of the Juvenile Population

Recent United States Census Bureau estimates and projections indicate that "the United States is beginning to undergo a demographic shift in which the population of juveniles at risk for committing homicides will no longer be decreasing but instead will be increasing."¹²⁶ Between 1990 and 2000, the five to seventeen year old age group is expected to increase by 7 percent. However, given the "described confluence of the forces now at work in American society . . . that is, increasing drug abuse, child abuse, access to guns and childhood poverty," Ewing solemnly predicts a rise in the rate of juvenile homicide over the next ten years which will result in annual record numbers of juvenile homicides far in excess of the anticipated 7 percent growth in this age group.¹²⁷

III. AN ASSESSMENT OF EWING'S TREATMENT OF THE PHENOMENON OF JUVENILE HOMICIDE

When Children Kill: The Dynamics of Juvenile Homicide is described on the back flap of its book jacket, as being "a valuable resource for mental health care professionals, lawyers, and those who work with violent juvenile offenders." In the Introduction, Ewing declares his intent to examine "the phenomenon of juvenile homicide from a variety of perspectives."¹²⁸ He then provides a descriptive summary of the book's ten chapters—the critical questions to be answered and the type of information to be presented. In this section, consideration is given first to determining whether *When Children Kill*, in fact, addresses all of the issues raised by Ewing in his Introduction. Second, an assessment is made regarding the overall adequacy of Ewing's discussion of the phenomenon of juvenile homicide.

125. *WHEN CHILDREN KILL*, *supra* note 3, at 133.

126. *Id.* at 135.

127. *Id.* at 135.

128. *Id.* at xv.

A. Coverage

Chapter 1's statistical overview, as discussed above in section IB, is the most complete and successful part of *When Children Kill*. From a series of ten tables and accompanying text, a reader readily learns about all aspects of juvenile homicide. Namely, the number of juveniles who kill each year, the comparison between the numbers of juvenile homicides and the numbers of adult homicides each year; the numbers of boys, as opposed to girls who kill; the ages of those who kill; the types of relationships between victims and juvenile offenders; and the circumstances under which juvenile killings occur. Ewing also presents data on the recorded racial and ethnic group membership of juvenile murder and non-negligent manslaughter arrestees.

In contrast, chapter 2's review of the published research on juvenile homicide does not answer fully the questions raised by Ewing in his descriptive summary. Namely: What has been discovered to date about this phenomenon? What remains to be discovered? What are the limitations of existing research approaches, and how can these limitations be overcome?¹²⁹

The bulk of chapter 2 is a presentation of the findings from various studies conducted over the past 50 years. As noted above in section ICI, Ewing deems the existing literature to be "surprisingly sparse—both in quantity and in quality."¹³⁰ He complains about various methodological flaws, such as very small study samples or anecdotal case studies by professionals to whom youths have been referred for evaluation or treatment, and the virtual lack of control or comparison groups. Moreover, while intrafamilial homicides account for less than one-fifth of all juvenile homicides, most of the research literature focuses on youth who have killed family members. This means that, as Ewing asserts, "to date, precious little has been learned"¹³¹ about the other more than 80 per cent who kill non-family. Ewing devotes very little space to identifying what remains to be discovered, or how to overcome the limitations of existing research approaches. By not addressing these two questions more completely, Ewing misses an opportunity to encourage or shape the design and direction of needed future research. For some reason, Ewing does not repeat the closing statement of his earlier study, co-authored with Rowley and Singer, that explic-

129. *See id.*

130. *See supra* text accompanying note 40.

131. *WHEN CHILDREN KILL, supra* note 3, at 13.

itly calls for "not only greater methodological sophistication but a broader, interdisciplinary conceptual approach [to juvenile homicide] which emphasizes and examines sociological as well as psychological and psychiatric variables."¹³²

This is not to say that Ewing does not make several very general observations. He does note the need for more solid empirical data, especially on those youngsters who kill acquaintances and strangers, given the strong indication that there are some clear differences between these youth and those who kill family members. And, he makes the point that empirical data is needed from studies with larger samples and control or contrast groups, conducted by investigators other than those providing "psychological/psychiatric evaluation/treatment services."¹³³

Ewing, however, does not articulate any clear agenda for future research or make any suggestions about how to overcome the methodological flaws that he decries. While chapter 2's literature review is a close replica of Cornell's first chapter¹³⁴ in the 1989 co-edited work, *Juvenile Homicide* (to which Ewing frequently cites), for some reason, Ewing does not mention any of Cornell's very specific observations about "[w]hat can be learned from the literature that would benefit future researchers and future users of juvenile homicide research."¹³⁵

132. See Rowley, *supra* note 10, at 9. Nor does Ewing refer to another co-authored work with Murray Levine et al. See *supra* note 77 (tracing the development of juvenile and family mental health law and policy in the United States and concluding that "the evolution of child and family mental health law and policy has been, is, and undoubtedly will continue to be a reflection of a variety of changing social needs and concerns . . .").

133. See *supra* text accompanying note 43.

134. See Cornell, *supra* note 22 and accompanying text.

135. *Id.* at 28. For instance, Cornell states: "publication of further case reports *outside the context of empirical study* (emphasis original) is unnecessary." He calls for more attention to be paid to sampling issues, and particularly cautions authors of studies using samples from hospital settings to be more conservative in their generalizations. Research on court-referred samples should be examined for representativeness and efforts should be made to replicate findings on a broader sample if possible.

Second, given the smallness of many study samples, Cornell urges adherence to well-accepted methodological standards. Care should be taken to support claims of group differences by running appropriate tests of statistical significance. "When researchers rely on chart reviews, interviews, ratings, or similar methods, evidence for the interrater reliability of the measures must be presented." *Id.* Of special importance is whether or not raters are blind to group membership of the subjects they rate.

Third, Cornell urges that studies that attempt to characterize *the* juvenile murderer should be rejected automatically as naive. Case studies have documented consid-

Instead, Ewing merely reports on the conflicting results from some of the research, but he does not flag any areas as meriting additional study.

For example, he reports on a number of studies that have found some correlation between the cognitive and language deficits of mental retardation and learning disabilities and/or neurological impairment and juvenile homicide.¹³⁶ He notes also that "other studies have been more equivocal. Numerous case studies have documented juvenile killers with no apparent neurological impairment."¹³⁷ Yet, he does not urge any further inquiry.

With respect to the characteristics of the families of juveniles who kill, he again refers generally to the need to correct the bias resulting from heavy use of samples just of intrafamilial killers. He cites certain conflicting study results about whether the family was broken or intact at the time of the killing.¹³⁸ This, along with a closer look at the affect of sexual abuse, might well have been flagged as matters deserving further study.

Next, with respect to patterns of prehomicidal behavior, Ewing mentions studies reporting conflicting references to the presence and

erable heterogeneity of youth committing homicidal acts; recent studies demonstrate important differences *within* homicide groups. Hence, future research, Cornell states, should focus on identifying etiological factors associated with relatively homogenous subgroups of violent youths.

And fourth, Cornell demands that attempts to subgroup violent youth should follow standards procedures for proposing any diagnostic entity. Criteria should be clear and reliable. The means by which youths are classified should be distinguished from findings used to support the validity of the classification. *Id.* at 28-29.

136. See *supra* notes 49-56 and accompanying text.

137. WHEN CHILDREN KILL, *supra* note 3, at 20 nn. 64-67 (citing studies by D.H. Russell, *Girls Who Kill*, in 30 INT'L J. OFFENDER THERAPY COMP. CRIMINOLOGY 171, 172 (1986) (no apparent neurological impairment); T.A. Petti & L. Davidman, *Homicidal School-Age Children: Cognitive Style and Demographic Features*, in 12 CHILD PSYCHIATRY & HUMAN DEV. 82, 85 (1981) (evidence of brain damage in only one of eleven children); K.S. Walsh-Brennan, *Psychopathology of Homicidal Children*, in 94 ROYAL SOCIETY OF HEALTH 274, 276 (1974) (none of ten juveniles killers suffered epileptic symptoms); I.B. Sendi & P.G. Blomgren, *supra* note 49, at 424 (only 20 percent of those studied demonstrated abnormal EEGs)).

138. See *id.* at 20-21; *supra* notes 48-58 and accompanying text (citing studies that found a high percentage of homicidal youth came from broken homes; two studies with contrary findings, cited by Ewing are: (1) King's study, *supra* note 48, (most of the sample of 9 youths were living in intact families when they killed) and (2) Fiddes, *A Survey of Adolescent Murder in Scotland*, in 4 J. ADOLESCENCE 47, 58 (1981) (twenty-two of thirty-seven homicidal youngsters studied were from intact families)).

absence of certain behaviors from prehomocidal histories;¹³⁹ possibly, another area for further investigation. Similarly, he comments how few studies have examined substance abuse among juveniles who kill, although "[c]riminological research in general indicates that there is a significant if not causal relationship between substance abuse and criminal activity, especially violent crime."¹⁴⁰ Ewing, however, calls for no further investigation. Another inquiry area, not specifically flagged by Ewing, is the extent to which fire setting and cruelty to animals, two behaviors frequently found along with enuresis, actually appear in the prehomocidal histories of juvenile killers.

At the beginning of chapter 2, Ewing states:

Ultimately, deciding how society and law should deal with homicidal youth will require answers to a number of difficult questions: Who are these youngsters who kill? Why do they kill? To what extent, if any, do they pose a continuing threat to society? And, what, if anything, can be done to rehabilitate them and reduce the magnitude of that threat?¹⁴¹

Ewing's middle chapters, 3 through 8, provide very graphic, descriptive profiles for seven different types of juvenile homicide.¹⁴² These chapters are replete with references to all types of juvenile killings committed in various parts of the United States and reported in the media during the 1980s. This is a strength of the book and indeed, sets it apart from the frequently cited chapters¹⁴³ in *Juvenile Homicide*, a work whose organizational approach to subgroup classification Ewing follows in *When Children Kill*. From the many media accounts that Ewing includes, one gets a clear sense of the variety of youngsters who kill.

What these middle chapters do not answer, in any comprehensive way, is *why* these juveniles kill. Implicit, in Ewing's closing prediction

139. *WHEN CHILDREN KILL*, *supra* note 3, at 23-28; *supra* notes 60-63 and accompanying text.

140. *WHEN CHILDREN KILL*, *supra* note 3, at 35.

141. *Id.* at 13.

142. Namely, intrafamilial homicides; homicides committed in the course of other crimes; senseless killings; gang killings, killings by children under 10 years; and homicides by girls. *See supra* notes 14-18 and accompanying text.

143. *See, e.g.*, Elissa P. Benedek & Dewey G. Cornell, *Clinical Presentations of Homicidal Adolescents*, in *JUVENILE HOMICIDE*, *supra* note 22, at 37-58; Dewey G. Cornell, *A Causes of Juvenile Homicide: A Review of the Literature*, in *JUVENILE HOMICIDE*, *supra* note 22, at 1-37; Dewey G. Cornell et al., *A Typology of Juvenile Homicide Offenders*, in *JUVENILE HOMICIDE*, *supra* note 22, at 59-84.

of an anticipated growth in juvenile homicide during the 1990s, is the affirmative acknowledgement that these youngsters do pose a threat to society. There is, however, no exploration of what, if anything, can be done either to rehabilitate them or to reduce the magnitude of the societal threat they pose. These omissions constitute major shortcomings and seriously undercut the usefulness of this book.

Chapter 9, as discussed part in II.D.,¹⁴⁴ introduces the reader to the existing structure of state statutory provisions under which some juvenile killers remain under the jurisdiction of the juvenile justice system and others are prosecuted in adult criminal courts, sometimes receiving lengthy or life prison sentences or the death penalty. Again, by limiting himself strictly to reporting the status quo, Ewing adds nothing to the continuing debate¹⁴⁵ over how our legal system should respond to and deal with youngsters who kill. So, although he refers to several chapters¹⁴⁶ in *Juvenile Homicide*, he completely ignores Bonnie's suggestions¹⁴⁷ for a more coherent sentencing system for juvenile offenders.

As promised in the Introduction, chapter 10 concludes with a specific prediction about the likely incidence of juvenile homicide in America between now and the turn of the century. Ewing presents statistical data on each of five forces,¹⁴⁸ currently operating in society, and deemed to have a close relationship to juvenile homicide. The real strength of this final chapter, as can be said about the entire book, is the clarity with which Ewing describes *who* these youngsters are. Perhaps this is enough to make the work "a valuable resource" for professionals, but this reviewer found Ewing's failure to answer or grapple comprehensively with all of the difficult questions,¹⁴⁹ so precisely posed at the beginning of chapter 2, very frustrating.

144. See *supra* notes 77-108 and accompanying text.

145. See discussions *infra* part III.B.

146. See, e.g., Richard J. Bonnie, *Juvenile Homicide: A Study in Legal Ambivalence*, in *JUVENILE HOMICIDE*, *supra* note 22, at 183-218; Dewey G. Cornell et al., *Legal Outcomes of Juveniles Charges with Homicide*, in *JUVENILE HOMICIDE*, *supra* note 22, at 163-82.

147. See discussion *infra* part III.B.

148. *WHEN CHILDREN KILL*, *supra* note 3, at 127-135 (table 10-1 relating National Estimates of the Number and Rate per 1,000 of Child Abuse and Neglect and table 10-2 relating Percentage of Americans under Age 18 in Families below the Poverty Level 1978-1987).

149. See *supra* text accompanying note 141.

B. *Is the Phenomenon Adequately Explained?*

Having assessed the extent to which Ewing accomplishes his stated aims in writing *When Children Kill*, the sufficiency and accuracy of Ewing's treatment of the phenomenon of juvenile homicide is next considered. Has he fully and properly explained the "dynamics" of juvenile homicide?

The term "dynamics"¹⁵⁰ has various meanings. It is presumed, however, that its use in the subtitle of *When Children Kill* indicates that the book attempts to explain and/or define what "forces, physical or moral," contribute to the phenomenon of juvenile homicide or, what kind of "psychological aspects or conduct of interpersonal relationships" are associated with juvenile homicide.

Perhaps, because Ewing is a forensic, clinical psychologist, his discussion of the phenomenon of juvenile homicide primarily focuses on individual psychological aspects and conduct of interpersonal relationships of juveniles who kill. Surprisingly, he makes no reference to any overarching or unifying theory to explain why some youngsters commit homicidal acts and most others do not. Of course, Ewing did not have the opportunity to consider the applicability of the theory advanced by Gottfredson and Hirschi in their 1990 book, *A General Theory of Crime*. They assert that the essential element of criminality is the absence of self-control and identify ineffective child-rearing as "[t]he major 'cause' of low self-control."¹⁵¹

Another limitation in Ewing's treatment of juvenile homicide is that he acknowledges an important array of societal forces¹⁵² that predictably may increase the incidence of juvenile homicide, but he does not exhaustively explore the broader underlying societal dynamics that make juvenile homicide a serious public health¹⁵³ issue—indeed a threat to society, yet a problem with very identifiable historical antece-

150. The term "dynamics" has various meanings. See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 407 (1973). When used in reference to the physical sciences, the term may indicate "a study of the relationship between motion and the forces affecting motion." Or more generally, "dynamics may mean "the physical or moral forces that produce motion and change in any field." When used in the context of psychoanalysis, "dynamics" may mean "(a) the action of psychic forces or mechanisms; (b) the psychological aspect or conduct of an interpersonal relationship."

151. See MICHAEL R. GOTTFREDSON & TRAVIS HIRSCHI, *A GENERAL THEORY OF CRIME* 97 (1990); *infra* part IIIA (for further discussion).

152. See *supra* text accompanying notes 109-127.

153. See *supra* note 12.

dent roots.

Many years ago, an observation by Dr. Luther Halsey Gulick, in the first chapter of *The Metropolitan Problem and American Ideas* made a profound impression on this reviewer. Dr. Gulick declared: "Once an indivisible problem is divided, nothing effective can be done about it."¹⁵⁴ Generally regarded to be the dean of American public administration, Dr. Gulick was speaking about problems confronting mid-twentieth century American urban cities. The same truism, however, can be said today about the phenomenon of juvenile homicide. If effective strategies are to be mounted to reduce the threat of a steadily growing incidence of juvenile homicide, there first must be full recognition of the complex, underlying interrelatedness of individual and societal factors.

In order not to divide an indivisible problem, such as the phenomenon of juvenile homicide, social policy makers and professionals who work with juvenile killers need to understand clearly both *who* these youngsters are and *why* they kill. It is not enough to present statistical data, as Ewing does in his closing chapter 10, on certain critical societal forces deemed to contribute to the incidence of juvenile homicide, without some further historical discussion of broad transformations in American society or the structure of its families.

What is the relationship between the developmental deficits in a juvenile killer and the way in which society may default on its responsibility to ensure that parents and families successfully rear their children to be law-abiding citizens? Is juvenile homicide an inevitable consequence of a violent society—one in which violence is portrayed resoundingly and repetitively in all forms of popular culture? Does significant breakdown in the family mean that an alarming proportion of our child population no longer is reared to be "WAPs"—well-adjusted persons with positive self-esteem, capable of respecting other human life, and possessing sufficient self-control to abstain from violent behavior such as murder or non-negligent manslaughter? Hence, the reference in the title of this essay to Malcolm X's metaphoric characterization of President Kennedy's assassination as "a case of '*the chickens coming home to roost.*'"¹⁵⁵ Is our society merely reaping what has

154. LUTHER H. GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* 24 (1966).

155. See MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* 301 (Ballantine Books 1973) (authored with the assistance of Alex Haley). Shortly after President Kennedy's assassination, Malcolm X spoke in New York City at the Manhattan

been sowed?

To be a truly useful resource, generally more is required than just a straightforward description of the present and a prediction about the future. Knowledge of the etiology and past historical evolution of a situation informs development of an effective response. In this respect, Ewing's treatment of juvenile homicide is incomplete. He implicitly approaches the phenomenon as though it were a freestanding, extraordinary occurrence and provides no general discussion of man's age-old tendencies and urges to attack.¹⁵⁶ No explicit references are made in *When Children Kill* to certain significant historical developments that some assert have undermined the authority of parents and undercut their ability to rear and civilize their children. Such background information can be found in two recently published scholarly works on the American family.¹⁵⁷

Historian Steven Mintz and anthropologist Susan Kellogg, a husband and wife research team, in *Domestic Revolutions: A Social History of American Family Life* effectively make the point that domestic

Center. He recounts:

It was on the theme, familiar to me, of 'as you sow, so shall you reap,' or how the hypocritical American white man was reaping what he had sowed Without a second thought, I said what I honestly felt—that it was, as I saw it, a case of 'the chickens coming home to roost.' I said that the hate in white men had not stopped with the killing of defenseless black people, but that hate, allowed to spread unchecked, finally had struck down this country's Chief of State. I said it was the same thing as had happened with Medgar Evers, with Patrice Lumumba, with Madame Nhu's husband.

Id.

156. See, e.g., DESMOND MORRIS, *THE NAKED AGE* (1969) (explaining the nature of man's aggressive urges as understood against the background of his animal origins); see also Gottfredson & Hirschi, *supra* note 151, at 31, 34 asserting that:

Despite popular and scholarly opinion to the contrary, homicide is perhaps the most mundane and, in our view, most easily explainable crime; and further that: "[H]omicide may be prevented by eliminating interaction between victims and offenders, by removing lethal weapons from offenders, by increasing the availability of by-standers and the probability of their interventions by decreasing the resistance of victims of lesser crimes, and by decreasing the use of alcohol and drugs. Homicide can also be prevented by reducing the number of people who tend toward criminality.

157. See JAN E. DIZARD & HOWARD GADLIN, *THE MINIMAL FAMILY* (1990); STEVEN MINTZ & SUSAN KELLOGG, *DOMESTIC REVOLUTIONS: A SOCIAL HISTORY OF AMERICAN FAMILY LIFE* (1988).

violence is nothing new.¹⁵⁸ This work systematically traces how the American family of today has changed from early colonial days when it "was the fundamental economic, educational, political, and religious unit of society."¹⁵⁹ Mintz and Kellogg believe that the most striking differences that set the seventeenth-century family apart from its present-day counterpart involve the social experiences of children. Formerly, many children died in infancy or before attaining their majority. Young children of the well-to-do might be "put-out" to wet nurses. Since many New Englanders, unlike Europeans of the time, did not swaddle their young, "carelessly supervised children sometimes crawled into fires or fell into wells."¹⁶⁰ In contrast:

The moral upbringing of Puritan children was never treated casually . . . [B]elief in infant depravity and original sin exerted a powerful influence on methods of child rearing. In their view, the primary task of child rearing was to break down a child's sinful will and internalize respect for divinely instituted authority through weekly catechisms, repeated admonitions, physical beatings, and intense psychological pressure. "Better whipt, than damned," was Cotton Mather's advice to parents.¹⁶¹

Mintz and Kellogg describe how "[d]uring the early years of the twentieth century, a host of educators, legal scholars, social workers, and academic social scientists created a new ideal of family life that they termed the 'companionate family'."¹⁶² In this new ideal family, relations formerly based on authority now depend on affection and mutual interest. Spouses are to be friends and lovers and parents and children are to be pals. "To achieve this ideal, influential groups recommended liberalized divorce laws; programs of marriage counseling, domestic science, and sex education; and permissive child-rearing practices stressing freedom and self-expression over impulse-control."¹⁶³ As a result, Mintz and Kellogg assert that "[s]ince the 1960's America

158. See MINTZ & KELLOGG, *supra* note 157, at 11-13 (Massachusetts Bay Colony Puritan court records reveal: "Between 1630 and 1699, at least 128 men were tried for abusing their wives." But the punishments imposed on the men were mild, in contrast to the harsh punishments given Puritan women brought to court for heaping abuse on their husbands.)

159. *Id.* at xiv.

160. *Id.* at 14.

161. *Id.* at 14-15.

162. MINTZ & KELLOGG, *supra* note 157, at xvi.

163. *Id.*

has become a permissive society, not merely in the superficial sense of becoming more open and tolerant, but in the more profound sense of becoming reluctant to accept responsibility for the economic and social consequences of social change”¹⁶⁴ To the phenomena of increasing numbers of divorces, working mothers, and teen-age pregnancies, that Mintz and Kellogg cite, one could add juvenile homicide.

Dizard and Gadlin¹⁶⁵ also thoughtfully examine how the American family has changed. Some of their insights help to explain the post-industrial social environment in which children who kill today are being reared. To describe today’s American family—a consequence of embracing the “companionate family” ideal promoted early in the twentieth century, they use the term “minimal family.” They assert that traditional family values and the very base of familism¹⁶⁶ have been destroyed by “the interplay between a growing economy that seeks to stimulate steadily expanding consumption and individuals whose personal lives are increasingly predicated upon egalitarian and democratic forms of interaction.”¹⁶⁷ Furthermore:

As industrialism gained momentum, it necessarily had to undermine the bases of familial mutual aid. In order to produce the autonomy that a full-fledged market economy requires, both the public and private sectors had to adopt policies that would make it possible for people to reduce their embeddedness in kin networks, allowing them to be geographically and socially mobile and more

164. *Id.* at xvii. Mintz & Kellogg further assert that:

Individuals, families and society as a whole have been hesitant to accept full responsibility for the care of the young, the elderly, the poor, the handicapped, or the mentally ill or for sex education or questions of birth control. *Responsibility has been splintered, and as a result many family-related problems are dealt with in a piecemeal or makeshift manner.* Unable to decide whether further to encourage the transfer of traditional family functions to public institutions or to help families to become more capable of handling these problems on their own, Americans have responded with a pervasive sense of uncertainty.

Id. at xvii-xviii (emphasis added).

165. See DIZARD & GADLIN, *supra* note 157.

166. Dizard & Gadlin use the term “familism” to “mean a reciprocal sense of commitment, sharing, cooperation, and intimacy that is taken as defining the bonds between family members. These bonds represent the more or less unconstrained acknowledgment of both material and emotional dependency and obligation Familism embraces solicitude, unconditional love, personal loyalty, and willingness to sacrifice for others.” *Id.* at 6-7.

167. *Id.* at 35.

receptive to the idea of meeting needs through markets rather than through intrafamilial exchanges¹⁶⁸

When Dizard and Gadlin shift from considering broad economic changes to focusing on changes within individual families, they claim that the status of parents in today's minimal family is dramatically different than that of parents in the traditional family of our agrarian past.

Parents were [once] the principal and authoritative interpreters of the world for their children and generally possessed the skills, aptitudes, and know-how that children knew they needed to get on in the world Parents' skills were undeniable, even if they were resented. Traditional societies offered the young few, if any, alternatives to parental guidance. Whatever the style of parent-child interaction, whether parents were authoritarian or permissive, stern and distant or gentle and warm, *they were authoritative*.¹⁶⁹

As industrialism and its accompanying "shift in the basis of wealth from the land to the ownership of capital" made "whole new repertoires of skills" necessary, "[s]lowly at first, but with steadily accelerating momentum, parents ceased being the authoritative interpreters of the world for their children."¹⁷⁰ Parents rooted in an agrarian society did not possess the skills to prepare their children for the factory or city. "Quickly, children become more knowledgeable about the new social order than their parents."¹⁷¹

To illustrate the erosion of parental authoritativeness, Dizard and Gadlin refer to the immigrant experience—with children often teaching their parents the English they need or serving as translators for interactions with police, social workers and other agents of the mainstream culture. They claim that:

The intense chauvinistic Americanization campaign begun in the late nineteenth century and sustained through the early decades of the twentieth century altered to the point of inverting the customary relationship between parents and children. In manifold ways, the systematic discrediting of ethnic cultures and languages drove a wedge between parents and children. The fact that this went on

168. *Id.* at 23.

169. *Id.* at 67-68.

170. *Id.* at 68-69.

171. DIZARD & GADLIN, *supra* note 157, at 69.

under official auspices and thus carried the full weight and blessing of the society as a whole clearly certified the children as culturally superior to their parents.¹⁷²

As Dizard and Gadlin point out, “[i]f parents insisted on their children’s obedience and respect, they flirted with disabling their children for the world in which they would live. The combined effects of immigration and rapid industrialization undercut the substantive basis on which parental authority rested.”¹⁷³

As the authority of all parents, not just immigrant parents, declined, emotional bonds with children expanded and became the basis for intensified parental influence on children. Dizard and Gadlin note that “emotional intensity and intimacy replaced authoritativeness not only as the primary force behind parents’ power over children but also as the primary base for familial interdependence.”¹⁷⁴ Overtime, various interdependencies¹⁷⁵ between parents and children have been eroded just as traditional skills and authority have waned.

In the modern family, according to Dizard and Gadlin, the primary aim of childrearing has shifted from discipline directed toward obedience to socialization that encourages flexibility and choice.¹⁷⁶

172. *Id.* at 70. The same can be said today for Hispanics, South East Asian and other newer immigrant families. Dizard & Gadlin note that:

The current dispute over bilingualism in our schools and in public facilities is a dispute that, similarly, has considerable implications for family life. To reject bilingualism is to insist that Hispanic children learn to derogate the language of their parents. That this will reduce the authority of parents can scarcely be doubted. In this sense, the controversy is not only about language and assimilation; it is also about the integrity of a certain kind of relationship between parents and children.

Id. at 234-35 n.6.

173. *Id.* at 71.

174. *Id.* at 74-75.

175. *See id.* at 73-74. Not only were children once dependent on their parents for sustenance, but they also were expected to make a contribution to the family in the form of chores and/or labor outside the home. Parents were reciprocally dependent upon their offspring to care for them in their old age. Dizard and Gadlin state:

[T]he interdependencies between adults and their elderly parents [have] changed—the elderly [can] no longer count on their adult children to attend adequately to their needs. By the same token, as social security and private pension plans were put in place, many of the elderly quickly came to prefer being independent of their children.

Id. at 74.

176. DIZARD & GADLIN, *supra* note 157, at 73.

Many parents, however, do not know how to accomplish this.

When parents are unable to instill in their children appropriate standards and values; when knowing their own location in society does not tell them how to treat their children; when the inappropriateness of prevailing adult roles makes traditional modes of childrearing obsolete, then they must look elsewhere for childrearing advice¹⁷⁷

Some parents, frequently those of the middle and upper classes, seek the help of child guidance and family therapy professionals.¹⁷⁸ Many other parents, frequently those of the lower classes, residing in troubled and distressed communities, either have no access to help or lack the capability to utilize it.

Dizard and Gadlin see a real "catch-22" type dynamic as now operating in the minimal family that poses some serious obstacles to the development of solid self-esteem in children. "[L]ove, intimacy, and emotional dependency—the principal if not the only bases of parent-child interaction—have been made increasingly conditional."¹⁷⁹ Given the lack of any true economic role in the family, the child is very vulnerable to the withdrawal of love; and "[p]arents need love and affirmation from their children almost as much as children need these from their parents."¹⁸⁰

Indeed, Dizard and Gadlin's analysis of the minimal family sug-

[I]n traditional society, a parent could simply demand that a child do something because that was the parent's will. This approach was fine for teaching obedience and is well suited to shaping an adult who can follow orders or rules within clearly structured situations. However, it is not well suited to creating persons who can respond adaptively to situations in which one needs to understand the requirements and preferences of others and know how to act in constantly shifting circumstances. Toward this end, a disciplinary procedure in which the parent points out to the child the consequence of his or her actions for the parent's feelings is much more likely to create a person attuned to the subtleties of interpersonal interaction In traditional societies, the parent says to the child, "If you do X, I will hurt *you*." By contrast, a contemporary parent is much more likely to say "If you do X, you will hurt *me*." The child learns about undesirable behavior in terms of its consequences for others.

Id. at 75-76.

177. *Id.* at 78.

178. *Id.*

179. *Id.* at 81.

180. DIZARD & GADLIN, *supra* note 157, at 80.

gests that a close examination of certain factors might provide more complete responses to Ewing's questions about why juveniles kill, the nature of the threat to society, and whether anything can be done to reduce it. For example, their following comments suggest some underlying casual factors involved in the increasing incidence of juvenile homicides occurring during the commission of theft-related felonies.

As the satisfactions of family life grow more and more problematic and uncertain, the array of satisfactions offered via consumption has expanded exponentially. Though people still ritually acknowledge that "you can't buy happiness," it is clear that getting and spending have become major sources of gratification for Americans [T]he accumulation of things has become a significant measure of self-worth The impersonality of the marketplace increasingly appears as a refuge from emotional entanglements that diminish autonomy.¹⁸¹

And, there are at least two other professional fields, criminology and public health, that Ewing does not consider.¹⁸² Both offer clearer understandings about why some young people kill, the nature of the threat these juveniles pose for society, and what, if anything, can be done for them *or* to protect society than articulated by Ewing in *When Children Kill*.

IV. DEFINING THE CHALLENGES

The urgent need, in this writer's opinion, to view juvenile homicide as a public health issue was noted in the Introduction of this Essay.¹⁸³ Ewing's failure to do this in *When Children Kill* was recognized in the preceding part II.B.¹⁸⁴ Now, in this section, fuller attention is given, first, to spelling out the broad societal challenges that this phenomenon poses and, second, to summarizing the specific dilemmas that confront our legal systems.

181. *Id.* at 98.

182. *See supra* notes 151 and 154 and discussion *infra* part III.A. (regarding the relationship between ineffective child-rearing and criminal acts) and note 12 and discussion *infra* part III.A. (regarding the public health approach).

183. *See supra* note 12 and accompanying text.

184. *See supra* note 153 and accompanying text.

A. *Will Society Heed This "Wake-Up" Call?*

The growing phenomenon of juvenile homicide is not the only barometer of the high price many consider American children to be paying "for the social transformations of the 1960s and 1970s—spiraling divorce rates, the rapid influx of mothers into the work force, a more relaxed attitude toward sex, and the widespread use of television as a form of child care."¹⁸⁵ Mintz and Kellogg list a variety of social indicators to support their assertion that the well-being of American children has declined.

Since 1960 the high-school drop out rate has increased until roughly one student in four drops out before graduation; juvenile delinquency rates have jumped 130 percent; the suicide rate for young people fifteen to nineteen years old has more than tripled; illegitimate births among white adolescent females have more than doubled; and the death rate from accidents and homicides has grown sixteenfold. Half a million adolescent females suffer from such eating disorders as anorexia nervosa or bulimia. American teenagers have the highest pregnancy rate of any industrialized nation, a high abortion rate and a high incidence of such venereal diseases as syphilis, gonorrhea, and genital herpes.¹⁸⁶

Various social commentators believe that American society "has largely failed to come to grips with the major issues facing children, such as the need for quality care while parents work and the need for a stable emotional environment in which to grow up."¹⁸⁷ Reference was made, *supra* part II.B., to the major causal role ineffective child-rearing plays in explaining the low self-control that is a common characteristic of those who commit criminal acts. Gottfredson and Hirschi claim that:

[L]ow self-control is not produced by training, tutelage or socialization. As a matter of fact, all of the characteristics associated with low self-control tend to show themselves in the absence of nur-

185. MINTZ & KELLOGG, *supra* note 157, at 218.

186. *Id.* at 219 (citing Peter Uhlenberg & David Eggebeen, *The Declining Well-Being of American Adolescents*, in 86 PUBLIC INTEREST 25-38 (Winter 1986)).

187. *Id.* at 228 & n.83 (citing DAVID ELKIND, *THE HURRIED CHILD: GROWING UP TOO SOON* (1981); VANCE PACKARD, *OUR ENDANGERED CHILDREN: GROWING UP IN A CHANGING WORLD* (1983); MARIE WINN, *CHILDREN WITHOUT CHILDHOOD* (1983)).

turance, discipline, or training [T]he causes of low self-control are negative rather than positive; self-control is unlikely, in the absence of effort, intended or unintended, to create it.¹⁸⁸

To teach a child self-control, Gottfredson and Hirschi identify three minimum conditions: "some one must (1) monitor the child's behavior; (2) recognize deviant behavior when it occurs; and (3) punish such behavior."¹⁸⁹ They simply maintain:

All that is required to activate the system is affection for *or* investment in the child. The person who cares for the child will watch his behavior, see him doing things he should not do, and correct him. The result may be a child more capable of delaying gratification, more sensitive to the interests and desires of others, more independent, more willing to accept restraints on his activity, and more unlikely to use force or violence to attain his ends.¹⁹⁰

Rejecting the notion that any parent or societal subgroup positively socializes their youth to be uncivilized, Gottfredson and Hirschi, yet, recognize how easily things can go wrong:

First, the parents may not care for the child (in which case none of the other conditions would be met); second, the parents, even if they care, may not have the time or energy to monitor the child's behavior; third, the parents, even if they care *and* monitor may not see anything wrong with the child's behavior; finally, even if everything else is in place, the parents may not have the inclination or the means to punish the child.¹⁹¹

Some worry about the use of television as a form of child care and "believe that violence on TV provokes children to emulate aggressive behavior and acquire distorted views of adult relationships and communication."¹⁹² Regarding the research into television's impact, Mintz and Kellogg conclude:

188. Gottfredson & Hirschi, *supra* note 151, at 94-95.

189. *Id.* at 97.

190. *Id.*

191. *Id.* at 98. To illustrate the need for a child supervisor to recognize and take actions to have an impact on self-control, Gottfredson & Hirschi state: "Extensive television-viewing is one modern example, as is the failure to require completion of homework, to prohibit smoking, to curtail the use of physical force, or to see to it that the child actually attends school." *Id.* at 99.

192. MINTZ & KELLOGG, *supra* note 157, at 221.

Television does appear to be a cause of cognitive and behavioral disturbances. Heavy television viewing is associated with reduced reading skills, less verbal fluency, and lower academic efforts. Exposure to violence on television tends to make children more willing to hurt people and more aggressive in their play and in their methods of resolving conflicts However, television also introduces children to new experiences For many disadvantaged children, it provides a form of intellectual enhancement that deprived homes lacking books and newspapers could not afford While some television shows, such as *Sesame Street* and *Mr. Roger's Neighborhood*, do appear to improve children's vocabularies, teach them basic concepts, and help them verbalize their feelings, overwhelming evidence suggests that most television programs convey racial and sexual stereotypes, desensitize children to violence, and discourage the kinds of sustained concentration necessary for reading comprehension. On balance, it seems clear that television cannot adequately take the place of parental or adult involvement and supervision of children and that the tendency for it to do so is a justifiable reason for increased public concern.¹⁹³

Mintz and Kellogg view the United States today as "a society without a clear unitary set of family ideals and values . . . in [which] a profound sense of confusion and ambivalence reigns. One consequence of this confusion has been deep social division over which responsibilities the individual family should shoulder and which should be assumed by other, nonfamilial institutions."¹⁹⁴ They cite the 1978 White House Conference on Families, convened by President Jimmy Carter to develop coherent policies to assist and strengthen American families, as a dramatic illustration. Following the Conference, the White House issued a report. "Among the proposals were calls for ratification of the Equal Rights Amendment, the right to abortion, and sex education in the schools, but, because of the opposition spearheaded by the pro-family movement, implementation of these measures proved impossible."¹⁹⁵

It seems, thus, only practical to question whether American society will reach any meaningful consensus about ways to help families deal with contemporary problems in time to avert a disintegration of our society as a result of a collective failure of families and society to

193. *Id.* at 221-22.

194. *Id.* at xvii.

195. *Id.* at 235 & n.108 (citing GILBERT Y. STEINER, *THE FUTILITY OF FAMILY POLICY* (1981)).

rear children to be “well-adjusted,” productive, contributing members of society. Mintz and Kellogg call for “new social arrangements to help moderate the effects of women’s entry into the work force, of divorce, and of women’s increasing need for autonomy.” But, “the ultimate question is whether the nation has the political will to create conditions that will foster stronger families.”¹⁹⁶

Dizard and Gadlin also recognize a deep division within our society that may prevent us from achieving any meaningful solutions to problems such as juvenile homicide. In the final chapter of *The Minimal Family*, they restate their belief that the American family has been robbed “of its sources of stability: parental authoritativeness, self-sufficiency of the family unit, and reciprocal bonds of dependency Familism will continue to decline, . . . [and a] sense of crisis will become endemic.”¹⁹⁷ They further assert:

This crisis, which appears as a crisis of the family, is better understood as a crisis of the public realm. The contemporary resurgence of conservatism affirms this view, though conservatives respond to this crisis perversely—they attack one source of the public realm, government, as if reducing its power will restore power to families. But such is not the case. Indeed, the opposite is more nearly true

. . . .¹⁹⁸

Dizard and Gadlin then end by postulating a scenario in which the public realm is made to reflect the values of familism. If this occurred, they believe that “families may well find themselves more able to meet the emotional needs of their members; [and thus] it is also likely that more of our families will produce individuals who will not be content to be passive recipients of a benevolent bureaucracy, whether public or private.”¹⁹⁹ But, such a scenario includes some very big and uncertain “ifs;” and merely reenforces this reviewer’s worry that American society may lack the capacity to heed the “wake-up” call to make correc-

196. MINTZ & KELLOGG, *supra* note 157, at 237. Mintz & Kellogg suggest such policy changes as flexible working arrangements to enable employees to be effective parents—maternity and paternity leaves, adequate supplies of affordable quality substitute care when parents work, revision of welfare policies that encourage fathers to desert, and custody and visitation agreements that facilitate continuing contact between divorced parents and their children.

197. DIZARD & GADLIN, *supra* note 157, at 223-24.

198. *Id.* at 224.

199. *Id.*

tive adjustments.

Fortunately, some within the field of public health are responding to the "wake-up" call that juvenile homicide can be viewed as giving society. In 1984, Dr. C. Everett Koop, "while serving as the Surgeon General of this nation . . . startled a great number of Americans, including health professionals, when [he] declared that violence is as much a public health issue for physicians today as small pox, tuberculosis, and syphilis were for [his] predecessors in the last two centuries."²⁰⁰ Seven years later, Dr. Deborah Prothrow-Stith, a former Massachusetts Commissioner of Public Health, now an Assistant Dean at the Harvard School of Public Health, states in her book, *Deadly Consequences*, that this statement by the Surgeon General "gave credence, support and legitimacy to the fledgling efforts of a small band of physicians and public health experts who were redefining violence as a problem that needs to be studied and addressed as a gross assault on the public health."²⁰¹

Working within the discipline of public health—"the area of medicine most concerned with education and prevention,"²⁰² Dr. Prothrow-Stith is convinced that "public health strategies such as health education in the classroom; health education via the mass media; community awareness; hospital-based screening for risk determination"²⁰³ can be employed to change public attitudes toward violence and reduce violent adolescent behavior. She notes a string of successful public health approaches and interventions that have resulted in: a 30 percent decrease in the incidence of smoking after a twenty year campaign; public refusal to accord a right to drive while intoxicated; increased awareness about the problems of lead poisoning; child abuse; and the importance of exercise and diet in reducing the risk of heart disease and stroke.²⁰⁴

From a Harvard Medical School senior project attempt to design a public health intervention to combat adolescent violence, over the years, Dr. Prothrow-Stith has developed, refined and marketed a vio-

200. See C. EVERETT KOOP, *Introduction*, in *DEADLY CONSEQUENCES*, *supra* note 12, at xvii.

201. *Id.* at 28. Dr. Prothrow-Stith also states: "Twenty thousand homicide deaths a year convinced me that violence was a public health problem. To me it seemed self-evident: an 'ailment' that killed so many ought to have the full attention of physicians and others concerned with improving health." *Id.* at 3.

202. *Id.*

203. *Id.* at 133.

204. *Id.* at 28 and 133.

lence prevention curriculum “directed at 10th graders [that] is being used in schools in 400 cities in 45 states,”²⁰⁵ as well as in Canada, England, Israel, and America Samoa.²⁰⁶ This curriculum offers youngsters concrete alternative strategies for coping with life and resolving interpersonal conflicts without resort to violence.

Just as this reviewer intuitively has questioned the efficacy of Ewing’s understanding of the phenomenon of juvenile homicide and has wondered whether an “indivisible problem” is being divided, Dr. Prothrow-Stith in *Deadly Consequences* writes of how she reviewed three separate disciplines—criminal justice, mental health, and the biological sciences to learn more about the nature of violence and violence prevention. While acknowledging that she learned a great deal from each, she notes:

For me, however, each of these professions left two many questions unanswered—questions about the social context in which violence occurs. The more I learned, the more I was convinced that a new multi-disciplinary approach to violence, one beginning with the perception that violence is an assault on the public health, was required to save the endangered lives of our young.²⁰⁷

In *Deadly Consequences*, Dr. Prothrow-Stith and her co-author Michaela Weissman offer a way to respond to the epidemic of violence that is decimating a generation of young men, especially Black men²⁰⁸ living in poverty stricken urban areas. By recognizing the importance

205. Marian Christy, *Prothrow-Stith: A Voice Against Violence*, THE BOSTON GLOBE, Aug. 7, 1991, at 51, col. 4. For information about the Violence Prevention Curriculum For Adolescents, address inquiries to the publisher, Education Development Center, Inc., 55 Chapel Street, Newton, MA 02160.

206. *Deadly Consequences*, *supra* note 12, at 4.

207. *Id.* at 10.

208. See *id.* at 13-17. Utilizing statistics from the *FBI Uniform Crime Reports* and a comparative study by L.A. Fingerhut & J.C. Kleinman, *International and Interstate Comparison of Homicide Among Young*, in 263 J. AM. MED. ASS’N 24 (June 27, 1990), Dr. Prothrow-Stith states:

In the United States in 1986, 4,223 young men between the ages of 15 and 24 died in homicides. That worked out to a homicide rate of 21.9 per 100,000 for young males in this age bracket was a staggering 85.6 per 100,000—making homicide the leading cause of death for young men of color. Young blacks die in homicides seven times more frequently than young whites, and there us reason to believe that the percentage of black victims is increasing.

Deadly Consequences, *supra* note 12, at 13-14.

of the social context, they are able to discern the destructive interrelationships between societal failures to provide adequate housing, education and employment²⁰⁹ to a rapidly increasing percentage of our population and the inability of many individual parents to protect their children from becoming either victims or perpetrators of violence. There exists today, as their first chapter so rightly recognizes, much "free-floating anger."²¹⁰ "What is required, is a broad array of strategies; strategies that teach new ways of coping with anger and aggressive feelings."²¹¹

Some, like Dr. Prothrow-Stith, are "convinced that more police will not solve the problem of homicide in America. More police in patrol cars, more street lights, stiffer sentences, and new prisons will not . . . prevent two young people from settling their differences with a

209. Housing, education and employment are three important variables that can determine and explain where, how and why certain American families succeed and others fail. Where a family lives will greatly determine the educational opportunities available to the children of the family. The level of educational achievement will either expand or delimit the employment options open to those children upon reaching adulthood. One's earning capacity then will determine the range and quality of housing/community neighborhood in which the family's next generation can afford to live.

210. See *id.* 1-10. To explain the violence in poor black and white communities, Dr. Prothrow-Stith uses the term "free-floating anger" (suggested by psychologist Louis Ramey as presented in a symposium, *Homicide Among Black Males*, sponsored by The Alcohol, Drug Abuse and Mental Health Administration, May 13-14, 1980 and published in 95 PUBLIC HEALTH REPORTS 549-61, Nov.-Dec. (1980)):

This generalized anger, accompanied by feelings of frustration and helplessness, results from a feeling that the deck is stacked against them—that the double whammy of class and race places them so far outside the economic and social mainstream that they can never find a place inside. Disenfranchised, they are perpetually irritable, like a person who wakes up on the wrong side of the bed day after day. Their free-floating non-specific feelings of anger are easy to ignite. Any small provocation can cause an explosion

Id. at 6-7.

In the economic downturn of the 1990s, it is not just the poor who may experience "free-floating anger," but many formerly secure middle class workers and managers are experiencing grave losses and disruptions as they are laid off or furloughed from jobs, as businesses fail and bankruptcy filings dramatically increase. Some people experiencing such uncertainties and trials for the first time, have no coping skills. Those with strong dependency needs are apt to self-medicate themselves with either alcohol or drugs. In other cases, frustrations turn into uncontrolled outbursts of verbal or physical abuse in the home.

211. *Id.* at 28.

firearm.”²¹² And thus, she advocates vigorous use of a variety of public health interventions to reduce the incidence of violence. She focuses on the large societal picture and how our society glamorizes violence and asserts that this must change.

Dr. Prothrow-Stith, however, clearly recognizes that:

Public health is not a substitute for criminal justice. Criminal justice is after the event; it looks for blame and tries to punish. Public health is before the event; it looks for risk factors and tries to reduce those risk factors. In combination there is some hope that we will have an impact on a problem that is overwhelming our society.²¹³

And so, the efforts of public health educators, like Dr. Prothrow-Stith, are to be applauded. Perhaps, through their efforts, “schools, the media, industry, government, churches, community organizations, and every organized unit within our society [can be mobilized] to deliver the message [(and show by example)] that anger can be managed and aggressive impulses controlled.”²¹⁴

B. *Efficacy of Current Legal Responses*

At the beginning of chapter 2, Ewing states: “Juveniles who kill challenge long-standing and widely held conceptions of childhood and adolescence and create a serious dilemma for the criminal and juvenile justice systems.”²¹⁵ Which system should have dispositional jurisdiction? For what purpose—rehabilitation or punishment? How should the interests and fears of the public be balanced and weighed against the interests and rights of the accused juvenile homicidal offender?

In response to the epidemic spread of juvenile homicides, especially teens killing teens on the “mean streets” of our cities and even in the quiet of suburban areas such as Beverly, Massachusetts, or inside our schools, some today call for prosecuting these youngsters as adults in criminal court and giving them long prison sentences, in some cases

212. *Id.* at 27.

213. Deborah Prothrow-Stith, *The Epidemic of Violence and Its Impact on the Health Care System*, Special Presentation at the Second Annual Bridgewater State Hospital Conference on Violence, Bridgewater, Massachusetts (Mar. 5, 1991) (on file with the author).

214. DEADLY CONSEQUENCES, *supra* note 12, at 28.

215. WHEN CHILDREN KILL, *supra* note 3, at 13.

imposing the death penalty. This approach focuses on the conduct of individual offenders and its threat to society. It has rekindled a "simmering controversy regarding the mission and performance of the juvenile justice system. Doubts about the capacity of the juvenile system to protect the public from the 'violent juvenile' have led to widespread efforts to shift jurisdiction of these cases entirely to the criminal courts."²¹⁶

Just as Gulick in the 1960s when considering the problems then confronting American metropolitan areas was forced to say: "Many of the heralded 'solutions' have only made matters worse. In fact, conditions, are generally deteriorating and deteriorating fast . . .,"²¹⁷ so the same today can be said about the failing responses to crime in general, and to juvenile homicide in particular.

The tension that juvenile homicide today creates for the juvenile and criminal justice systems, is closely related to historical shifts between two paradigmatic conceptions of the goals of the sentencing process—one classical, one positivistic,²¹⁸ as well as the fact that certain very serious offenses committed by older teens, traditionally were exempted from the exclusive jurisdiction of the juvenile court.²¹⁹

The classical approach, as described by Bonnie:

Emphasizes the nature and seriousness of the offense as the predominant consideration in criminal sentencing; under this view, an explicit connection between the severity of punishment and the seriousness of the offense is necessary to achieve the retributive and deterrent goals of the penal law. In its most pronounced form, this view is reflected in the imposition of mandatory sentences on all persons convicted of a particular type of offense.²²⁰

In contrast, the positivistic philosophy of individualized sentencing assumes that "the social goal of preventing crime is thought to be served best by choosing the sentence most likely to minimize further criminality, either by facilitating rehabilitation or by incapacitating the

216. Bonnie, *supra* note 146, at 188.

217. GULICK, *supra* note 154, at 3.

218. See Bonnie, *Juvenile Homicide*, *supra* note 146, at 185-86; see also GOTTFREDSON & HIRSCHI, *supra* note 151, at 3-14 (describing and contrasting the classical and positivist conceptions of crime and appropriate sanctions).

219. See text *supra* part I.D.5, and accompanying notes 77-79.

220. Bonnie, *Juvenile Homicide*, *supra* note 146, at 185.

offender.”²²¹

According to Gottfredson and Hirschi, positivistic assumptions shaped the criminal system’s pursuit of rehabilitation as its major goal throughout most of the twentieth century. It was thought that offenders could be changed into law-abiding citizens if they received proper therapeutic treatment. Justice Black, speaking for the U.S. Supreme Court, in the 1949 decision of *Williams v. New York*,²²² succinctly articulated this individualized paradigm, when he declared:

The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender Today’s philosophy of individualizing sentences makes sharp distinctions for example between first and repeated offenders. Indeterminate sentences, the ultimate termination of which are sometimes decided by non-judicial agencies, have to a large extent taken the place of the old rigidly fixed punishments Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.²²³

Under this approach, judges were accorded wide discretion “to base the length of the sentence on the amount of treatment thought to be required . . . as well as on the seriousness of the offense and the danger posed by the offender to the community.”²²⁴ Not only did this approach provide justification for probation, parole and creation of a separate justice system for juveniles, it also opened the door to expanded roles for mental health experts (psychologists, psychiatrists and social workers) in the criminal justice system.

But, prevailing sentiments change. During the mid-1970s, rehabilitation fell into disfavor. Gottfredson and Hirschi state that “the link between positivism and rehabilitation was so strong that the ‘failure’ of rehabilitation led to a search for a new justification for sentencing decisions.”²²⁵ Hence, during the late 1970s, the deterrence school rose to prominence. Sentencing legislation reflecting this “marked shift toward the classical paradigm, now commonly characterized as a philosophy of

221. *Id.*

222. 338 U.S. 241 (1949).

223. Bonnie, *Juvenile Homicide*, *supra* note 146, at 186 (quoting *Williams v. New York*, 338 U.S. 241, 248-49 (1949)).

224. GOTTFREDSON & HIRSHI, *supra* note 151, at 257.

225. *Id.*

'just desserts,' " is well illustrated by the preamble to the California Penal Code which states in part: "[T]he purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provisions for uniformity in the sentences of offenders committing the same offense under similar circumstances."²²⁶ Gottfredson and Hirschi note that "[s]ince the early 1980s, incapacitation has been a major . . . policy . . . based on the obvious conclusion that an offender in prison is not committing crimes in the community."²²⁷

At its founding a century ago, the juvenile court was welcomed as a promising social experiment. "It would treat children as different from adults. Children would be removed from contact with adult offenders. The Court was to discover and meet the needs of each neglected or dependent child. It was to discover why a child was moving down a delinquent path and redirect him."²²⁸ But, alas, this "image of the juvenile court as a great benevolent child guidance clinic has lost all credibility in the last 20 years."²²⁹

The tension between the juvenile justice system, still ostensibly tilted toward the individualized paradigm, and the adult criminal sentencing system, that has shifted toward a classical paradigm, has given rise to a number of legislative enactments and amendments both to state transfer and waiver statutes and to state death penalty laws. Public outcry is forcing a round of amendments to either permit or require the transfer of younger offenders to be tried in adult criminal court. Some legislation, like that recently enacted in Massachusetts,²³⁰ by em-

226. Bonnie, *Juvenile Homicide*, *supra* note 146, at 186.

227. GOTTFREDSO & HIRSCHI, *supra* note 151, at 258.

228. JUSTINE WISE POLIER, *JUVENILE JUSTICE IN DOUBLE JEOPARDY: THE DISTANCED COMMUNITY AND VENGEFUL RETRIBUTION* 2 (1989).

229. W. Lawrence Fitch, *Competency to Stand Trial and Criminal Responsibility in the Juvenile Court*, in *JUVENILE HOMICIDE*, *supra* note 22, at 159.

230. See MASS. ANN. LAWS ch. 119, § 61 (Law. Co-op. 1991). Under this provision, last amended in 1990, the request for a transfer hearing to determine whether a 14-year or older juvenile is to be tried as an adult is discretionary with the commonwealth, except, "the court shall order a transfer hearing, in every case in which the offense alleged is murder in the first or second degree, manslaughter, rape, kidnapping or armed robbery that has resulted in serious bodily injury." *Id.*

In all cases except those involving murder in the first or second degree, the court at the transfer hearing:

shall find whether probable cause exists to believe that the child has committed the offense or violation charged. If probable cause is found, the court shall then determine whether the child presents a danger to the pub-

phasizing consideration of the seriousness of the offense and the danger the juvenile poses to the community, may seem to reflect positivistic assumptions, but in fact, by introducing the use of either age and/or the seriousness of the offense, create a presumption that the juvenile is not amenable to treatment in the juvenile justice system which ultimately subverts the individualized rehabilitative aims and goals of the juvenile justice system. Of grave concern, is the reality, in Ewing's words, that "to date precious little has been learned" about most of the juveniles who commit homicide.²³¹ Yet,

judicial determination regarding the juvenile's "amenability" to treatment (or "dangerousness") . . . [often] turn as much on the judges' values and intuitions as on any objectifiable criteria. To the extent that judges defer to the supposed clinical judgments of psychiatrists and other mental health professionals, the outcome turns largely on the clinician's own intuitions and values rather than any proven expertise.²³²

lic and whether the child is amenable to rehabilitation within the juvenile system. In making this determination the court shall consider but is not limited to evidence of the following factors: The nature, circumstances and seriousness of the alleged offense; the child's court and delinquency record; the child's age and maturity; the family, school and social history of the child; the success or lack of success of any past treatment efforts for the child; the nature of services available through the juvenile justice system; the adequate protection of the public; and the likelihood of rehabilitation of the child.

If . . . the court enters a written finding based upon *clear and convincing evidence* that *the child presents a significant danger to the public* and that *the child is not amenable to rehabilitation within the juvenile justice system*, the court shall dismiss the delinquency complaint and cause a criminal complaint to be issued

If the child is charged with murder in the first or second degree, and a finding of probable cause has been made, *there shall exist a rebuttable presumption that the child presents a significant danger to the public and that the child is not amenable to rehabilitation within the juvenile justice system*. If, at the hearing, the court enters a written finding based upon a *preponderance of the evidence* that *the child presents a significant danger to the public and that the child is not amenable to rehabilitation within the juvenile justice system*, the court shall dismiss the delinquency complaint and cause a criminal complaint to be issued

Id. (emphasis added).

231. See *supra* part IC1, IIA, notes 130-131 and accompanying text.

232. Bonnie, *Juvenile Homicide*, *supra* note 146, at 205-06.

In this reviewer's opinion, both approaches are bankrupt. The concept of rehabilitation is seriously flawed, especially when applied to conduct such as juvenile homicide. The concept of "rehabilitation" assumes that something once whole, has been fractured and now can be healed or put back together. It simply is not appropriate to expect the juvenile justice system, after a horrendous event as a homicide, to "rehabilitate" the perpetrator when the true causal factors contributing to the conduct indicate that the offender is not a fully formed, "well-adjusted" person with sound self-control, but rather is an incompletely formed individual with low self-esteem and little or no self-control.²³³ It is as though the glass vessel were half-full from the outset; not that it was full, then shattered, and by some miracle, all the liquid can now be recaptured and put back in place.

The policies of deterrence and incapacitation are also flawed for they assume a degree of rationality and self-control that does not exist in those who commit homicidal acts. Gottfredson and Hirschi claim:

[M]any homicides in fact seem to have little to do with "pleasure" and much to do with the reduction of "pain." The pain suffered by the offender is . . . often . . . the removal of a temporary source of irritation or an obstacle to the achievement of some immediate end, such as a successful burglary. In other words, the benefits of homicide are not large, profound, or serious. They are, on the contrary, benefits of the moment, and the effect of alcohol or drugs may be found precisely in their tendency to reduce the time-horizon of the offender to the here and now.²³⁴

Thus, Gottfredson and Hirschi's thesis is "that high self-control effectively reduces the possibility of crime—that is, those possessing it will be substantially less likely at all periods of life to engage in criminal acts."²³⁵ They further note that:

[P]eople with low self-control tend to be self-centered, indifferent, or insensitive to the suffering and needs others

. . . .

[P]eople with low-self control tend to have minimal tolerance for frustration and little ability to respond to conflict through verbal rather than physical means.

233. See *supra* text accompanying notes 188-91.

234. GOTTFREDSON & HIRSCHI, *supra* note 151, at 33.

235. *Id.* at 89.

In sum, people who lack self-control will tend to be impulsive, insensitive, physical (as opposed to mental), risk-taking, short-sighted, nonverbal, and they will tend therefore to engage in criminal and analogous acts.²³⁶

In other words, these are all the traits that Ewing describes in the profiles of various types of juvenile killers. As discussed *supra* III.A., Gottfredson and Hirschi attribute low self-control to ineffective child rearing and believe that these traits tend to persist through life.

They are very, very pessimistic about the effectiveness of current policies. They, like Dr. Prothrow-Stith, urge intervention that "would normally be regarded as *prevention* rather than treatment. They assume that trouble is likely unless something is done to train the child to forego immediate gratification in the interest of long-term benefits. Such training must come from adults who watch for and recognize signs of low self-control and take immediate corrective action. "Effective and efficient crime prevention that produces enduring consequences would thus focus on parents or adults with responsibilities for child-rearing;" they maintain that "[s]uch intervention does not suffer from coming too soon or too late in relation to when crime is committed; it does not suffer from potential illegality; and few serious objections can be raised to it on justice grounds."²³⁷

V. PRESCRIPTION FOR FUTURE ACTION

A. *What Society Should Do*

On the broad societal front, the following needs to happen. Violence must be recognized as a threat to the public health and the very future of our society. Ways must be found and programs supported, whereby all segments of our society, i.e., all ethnic groups, at every socioeconomic class level, are given meaningful opportunities to be gainfully employed. People must have meaningful roles from which they derive self-esteem and the means to acquire decent housing in neighborhoods that afford their children sound educational opportunities to acquire the requisite skills to be competitive in a technologically sophisticated workplace.

236. *Id.* at 89-90.

237. *Id.* at 269.

Immediate attention needs to be given to according greater status to those who are parents and teachers. All those responsible for socializing our young must be rewarded with greater respect and the resources needed to successfully parent and educate our young.

B. *Legal Reform*

Careful, thoughtful attention should be given to the suggestion of those who call for a more coherent sentencing system for juvenile offenders, such as Richard J. Bonnie.²³⁸ He maintains that "[i]t is impossible to justify the marked discontinuity between the dispositional consequences of juvenile and criminal court adjudication, a discontinuity that is especially pronounced in homicide cases."²³⁹ In Bonnie's view, "[t]he choice between delinquency adjudication in the juvenile court and criminal prosecution should be explicitly characterized as a decision about *grade* or severity of punishment, not as a choice between therapeutic and punitive intervention."²⁴⁰

In 1967 the President's Commission on Law Enforcement and Administration of Justice recognized that "juvenile justice is a system of social control, not a system of mental hygiene. Its separate existence is warranted not because of proven rehabilitative success but because leniency toward the young is morally justified and because the risk of failure is worth taking."²⁴¹ In 1978, the Twentieth Century Fund Task Force stated that:

No single age during mid-adolescence should be used as a sharp dividing line for sentencing policies. [Policy makers must consider] sentencing policy toward young offenders in both juvenile and criminal courts and [must coordinate] the policies of these two institutions so that public policy toward young offenders is based on consistent and coherent premises. (p.5)²⁴²

Thus, Bonnie asserts, no "[o]ne birthday should . . . bring on the full force of the criminal law" Age, of course plays a role. But, "[t]here must be some point below which the moral basis for punitive intervention is so much in doubt that even delinquency adjudication

238. See Bonnie, *Juvenile Homicide*, *supra* note 146, at 206-14.

239. *Id.* at 206.

240. *Id.*

241. *Id.*

242. *Id.* at 207.

should be precluded.”²⁴³ Bonnie suggests that between 10 and 21 years of age “severe and mandatory escalation of punishment based *solely* on the offender’s age or *solely* on the offense charged should be avoided.”²⁴⁴

Bonnie suggests two alternatives. The dispositional jurisdiction of *juvenile* courts could be extended “for some designated period beyond the adjudication (say three or four years) or . . . , a distinct sentencing for ‘youthful offenders’ in *criminal* courts [could be developed”]. The primary effects of ‘youthful offender’ statutes should be to authorize placement in separate facilities and to exempt the young offender from the imposition of mandatory sentences otherwise prescribed by the penal law.”²⁴⁵

Next, Bonnie would significantly restrict the class of transferable cases and require that jurisdictional choice be “governed by objective criteria relating to age, offense, and prior record, not by individualized predictive judgments. With one exception . . . , clinical opinion should play no role in the transfer decision and should be confined instead to dispositional recommendations.”²⁴⁶

Bonnie justifies his suggestions by arguing the following:

[I]t is unwise to *require* transfer of the entire class of murder cases involving offenders over a designated age. A generic exception for murder or intentional homicide is overinclusive because it would fail to take into account the clinically and morally significant variations among juveniles offenders. Many, if not most, of these cases belong in the juvenile court because the interventions available to the juvenile court are adequate to effect the social purposes of punishment. As Cornell et al. have shown, offenders who commit “conflict” homicides are distinguishable in prior adjustment and history from those who commit homicides in the context of other criminal activity. In many of these situations, the punishments available to the juvenile court are sufficiently severe to serve the retributive aims of the penal law and the risk of recidivism is so remote that the incapacitating functions of penal intervention are not implicated.²⁴⁷

243. Bonnie, *Juvenile Homicide*, *supra* note 146, at 207.

244. *Id.*

245. *Id.* at 207-08.

246. *Id.* at 208.

247. *Id.* at 210 (citations omitted); *see also Juvenile Justice, Not Vengeance*, BOSTON GLOBE, Dec. 26, 1991, at 16 (editorial claiming that Massachusetts’ State Department of Youth Services (DYS) “has a record of success in treating teenage

And finally, with respect to the death penalty, Bonnie observes that the current Supreme Court is unlikely to endorse the admittedly arbitrary proposition that 18-year old juveniles may be executed even though 17-year-olds are constitutionally exempt.²⁴⁸ Bonnie acknowledges that line drawing is a legitimate legislative function and some states have statutes clearly permitting the death penalty for youngsters below 18.²⁴⁹ But Bonnie's argument against the execution of juveniles "proceeds not from premises about the moral legitimacy and social value of the death penalty but rather from [his] premises about continuity in sentencing"²⁵⁰ To avoid the horror of exaggerated disparity between dispositional outcomes available in juvenile and criminal court which distort "the process of jurisdictional choice in all cases for which the death penalty is potentially available[, and t]o promote the graded approach to juvenile sentencing outlined above, the death penalty must be unavailable in any case initially within the jurisdiction of the juvenile court."²⁵¹

Clearly, state legislatures need to make a definitive judgment whether juveniles otherwise within the jurisdiction of the juvenile court should be put to death. "Even the American Bar Association which has refused to take a position on the death penalty, has urged legislatures to preclude the death penalty for offenders under 18."²⁵²

Some, like "Amnesty International [do] not argue that juveniles should not be held criminally liable or subject to severe penalties when appropriate."²⁵³ This reviewer, however, is deeply perturbed that "there are more juvenile offenders [(disproportionately poor and minority)] on death row in the USA than in any other country known to Amnesty International."²⁵⁴ Especially, since imposition of the death sentence is in clear contravention of international human rights standards,²⁵⁵ "de-

murderers. Of 79 offenders in its custody from 1967 to 1987, only one was found guilty of another killing, and that was in 1971, when the DYS system was in its infancy. Of those 79 offenders, 60 had no further trouble with the law within the first two years of their release.").

248. Bonnie, *Juvenile Homicide*, *supra* note 146, at 212-13.

249. *Id.* at 213; see also *supra* text accompanying note 97.

250. Bonnie, *Juvenile Homicide*, *supra* note 146, at 213.

251. *Id.*

252. *Id.* at 214.

253. Amnesty International, *United States of America: The Death Penalty and Juvenile Offenders, Summary* (AI Index: 51/23/91) (issued 9 October 1991).

254. *Id.*

255. Justice Brennan, dissenting in *Stanford*, stated that "three leading human

veloped in recognition of the fact that the death penalty—which denies any possibility of rehabilitation or reform—is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions.”²⁵⁶ Also disturbing is the fact that only 12 of the 36 states which impose the death penalty have expressly prohibited its imposition on persons below 18 at the time of the crime.²⁵⁷ Most of these states introduced the 18-year minimum age limit during the 1980s.²⁵⁸ The last state to do so was Maryland in 1987, according to Amnesty International, bringing it into line with both international standards against the execution of juveniles and standards recommended by criminal justice organization in the USA.²⁵⁹

rights treaties ratified or signed by the United States explicitly prohibit juvenile death penalties.” 109 S.Ct. at 2985. In footnote ten, he then cites:

Article 6(5) of the International Covenant on Civil and Political Rights, Annex to G.A. 2200, 21 U.N. GAOR Res. Supp. (No. 16) 53, U.N. Doc. A/6316 (1966) (signed but not ratified by the United States), *reprinted in* 6 International Legal Materials 368, 370 (1976); Article 4(5) of the American Convention on Human Rights, O.A.S. Official Records, OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1, Corr. 2 (1970) (same), *reprinted in* 9 International Legal Material 673, 676 (1970); Article 68 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, (ratified by the United States). *See also* Resolutions and Decisions of the United Nations Economic and Social Council, Res. 1984/50, U.N. ESCOR Supp. (No. 1), p. 33, U.N. Doc. E/1984/84 (1984) (adopting “safeguards guaranteeing protection of the rights of those facing the death penalty,” including the safeguards that “[p]ersons below 18 years of age at the time of the commission of the crime shall not be sentenced to death”), endorsed by the United Nations General Assembly, U.N.GAOR Res. 39/119, U.N. Doc. A/39/51, p. 211, ¶¶ 2, 5 (1985), and adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, p. 83, U.N. Doc. A/Conf. 121/22, U.N. Sales No. E.86.IV.1 (1986).

Id. at 2985-86.

256. Amnesty International, *supra* note 253.

257. *Id.* at 65 (California, Colorado, Connecticut, Illinois, Maryland, Nebraska, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Tennessee).

258. *Id.* (Ohio in 1981; Nebraska in 1982; Tennessee in 1984; Colorado and Oregon in 1985; New Jersey in 1986; Maryland in 1987).

259. *Id.* The American Law Institute's 1962 Model Penal Code recommended that the death penalty not be imposed on persons under 18. This position was reaffirmed by the 1980 Code revisers. Since 1971 the National Commission on Reform of Federal Criminal Laws has opposed imposition of the death penalty on those under 18. In 1983, in response to the American Bar Association (ABA) Section on Criminal

"However, there has been a retreat from what was an emerging legislative trend toward eliminating the death penalty for minors. Since 1986 several states have rejected attempts to introduce an age limit of 18 or have introduced minimum ages below 18."²⁶⁰ Also, Part II of Amnesty International's 1991 report describes how U.S. capital punishment laws contain safeguards intended to ensure that the death penalty is applied fairly and imposed only for the worst crimes and most culpable offenders, but that evidence in the cases examined revealed that these safeguards have not been met in practice.²⁶¹

Clearly, the increasing phenomenon of juvenile homicide is undisputedly of critical importance. The question remains whether our society has the capacity to answer the "wake-up" call and institute the kinds of preventive programs and supports for families so that they can perform their essential role of socializing our children. What is sorely needed, as Justice Wise Polier, states in her book, *Juvenile Justice in Double Jeopardy: The Distanced Community and Vengeful Retribution*, is "serious leadership [which] can prevent yielding to the current demands for retribution, vengeance, and reincarceration as the answer to delinquent youth [and] search out the causes of maladjustment, delinquency, alienation, and violence practiced by youth."²⁶² Judge Polier, speaking out of her 37-year tenure as the first woman appointed to the New York Family Court, would have Americans "end the meanness of current programs for youth and reject as unworthy the cruel and futile recriminalization of younger and younger children."²⁶³

It seems only fitting, thus, to end this essay as Dr. Prothrow-Stith concludes her book *Deadly Consequences*, with the poignant plea of Clementine Barfield, Detroit founder of SOSAD—Save Our Sons and Daughters:

Justice's Report with Recommendations to the House of Delegates, Report No. 117A (August 1973), the ABA House of Delegates adopted a resolution opposing in principle "the imposition of capital punishment upon any person for an offense committed while under the age of 18." *Id.* at 74.

260. *Id.* at 65. (Kentucky's 1980 revised juvenile code exempting juveniles under 18 from the death penalty was repealed in 1984; Kentucky and Indiana established 16 as the minimum age in their death penalty statutes in 1986; Georgia rejected a measure to raise the age from 17 to 18 in 1987; Wyoming introduced a minimum age of 16, and bills to introduce to raise the minimum age failed in Georgia, Mississippi and Virginia in 1989).

261. *Id.* at Summary & 71-4.

262. POLIER, *supra* note 228, at 164.

263. *Id.*

The children who are dying are real kids . . . They are real kids, from real families. Some were doing foolish things. Some were just caught in the wrong place at the wrong time. But all kids have a right to make mistakes. All kids have the right to live. Somebody has to wake up and see that our children are dying. My child is dead. Your child could be next.²⁶⁴

264. DEADLY CONSEQUENCES, *supra* note 12, at 203 (as spoken by Clementine Barfield to Dr. Prothrow-Stith during an interview in December of 1990) (SOSAD can be contacted at 453 Martin Luther King Blvd., Detroit, MI 48201. Telephone: (313) 833-3030).

